

**43.330.092 Film and video promotion account—Promotion of film and video production industry.** The film and video promotion account is created in the state treasury. All receipts from RCW 36.102.060(14) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of promotion of the film and video production industry in the state of Washington. [1997 c 220 § 222 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**43.330.094 Tourism development and promotion account—Promotion of tourism industry.** The tourism development and promotion account is created in the state treasury. All receipts from RCW 36.102.060(10) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of community, trade, and economic development only for the purposes of promotion of the tourism industry in the state of Washington. [1997 c 220 § 223 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**43.330.140 Recodified as RCW 43.07.290.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.330.145 Entrepreneurial assistance—Recipients of temporary assistance for needy families—Cooperation with agencies for training and industrial recruitment.** (1) The department shall ensure that none of its rules or practices act to exclude recipients of temporary assistance for needy families from any small business loan opportunities or entrepreneurial assistance it makes available through its community development block grant program or otherwise provides using state or federal resources. The department shall encourage local administrators of microlending programs using public funds to conduct outreach activities to encourage recipients of temporary assistance for needy families to explore self-employment as an option. The department shall compile information on private and public sources of entrepreneurial assistance and loans for start-up businesses and provide the department of social and health services with the information for dissemination to recipients of temporary assistance for needy families.

(2) The department shall, as part of its industrial recruitment efforts, work with the work force training and education coordinating board to identify the skill sets needed by companies locating in the state. The department shall

provide the department of social and health services with the information about the companies' needs in order that recipients of public assistance and service providers assisting such recipients through training and placement programs may be informed and respond accordingly. The department shall work with the state board for community and technical colleges, the job skills program, the employment security department, and other employment and training programs to facilitate the inclusion of recipients of temporary assistance for needy families in relevant training that would make them good employees for recruited firms.

(3) The department shall perform the duties under this section within available funds. [1997 c 58 § 323.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

## Title 44

### STATE GOVERNMENT—LEGISLATIVE

#### Chapters

#### 44.28 Joint legislative audit and review committee.

##### Chapter 44.28

#### JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

(Formerly: Legislative budget committee)

##### Sections

44.28.155 WorkFirst program evaluation.

**44.28.155 WorkFirst program evaluation.** (1) The joint legislative audit and review committee shall conduct an evaluation of the effectiveness of the WorkFirst program described in chapter 58, Laws of 1997, including the job opportunities and basic skills training program and any approved private, county, or local government WorkFirst program. The evaluation shall assess the success of the program in assisting clients to become employed and to reduce their use of temporary assistance for needy families. The study shall include but not be limited to the following:

(a) An assessment of employment outcomes, including hourly wages, hours worked, and total earnings, for clients;

(b) A comparison of temporary assistance for needy families outcomes, including grant amounts and program exits, for clients; and

(c) An audit of the performance-based contract for each private nonprofit contractor for job opportunities and basic skills training program services. The joint legislative audit and review committee may contract with the Washington institute for public policy for appropriate portions of the evaluation required by this section.

(2) Administrative data shall be provided by the department of social and health services, the employment security department, the state board for community and technical colleges, local governments, and private contractors. The department of social and health services shall require contractors to provide administrative and outcome

data needed for this study as a condition of contract compliance. [1997 c 58 § 705.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

**Title 45  
TOWNSHIPS**

**Chapters**

- 45.04 Vote on township organization.
- 45.08 Division of county into townships.
- 45.12 Town meetings—Powers of towns.
- 45.16 Qualifications of town officers.
- 45.20 Vacancies in office.
- 45.24 Duties of town supervisors.
- 45.28 Duties of town clerk.
- 45.32 Duties of town treasurer.
- 45.36 Pounds and poundmasters.
- 45.40 Duties of town officers at elections.
- 45.44 Compensation of officers.
- 45.48 Duty of retiring officers.
- 45.52 Claims against towns.
- 45.54 Assessment of property.
- 45.56 Town taxes and charges.
- 45.64 Actions by or against towns.
- 45.72 Miscellaneous provisions.
- 45.76 Disorganization of townships.
- 45.80 County-wide disorganization of townships.
- 45.82 Ad valorem taxes—Special assessments—  
Gifts—Disorganization election.

**Chapter 45.04  
VOTE ON TOWNSHIP ORGANIZATION**

Sections  
45.04.010 through 45.04.030 Repealed.

**45.04.010 through 45.04.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.08  
DIVISION OF COUNTY INTO TOWNSHIPS**

Sections  
45.08.010 through 45.08.090 Repealed.

**45.08.010 through 45.08.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.12  
TOWN MEETINGS—POWERS OF TOWNS**

Sections  
45.12.010 through 45.12.240 Repealed.

**45.12.010 through 45.12.240 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.16  
QUALIFICATIONS OF TOWN OFFICERS**

Sections  
45.16.010 through 45.16.120 Repealed.

**45.16.010 through 45.16.120 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.20  
VACANCIES IN OFFICE**

Sections  
45.20.010 Repealed.  
45.20.020 Repealed.

**45.20.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**45.20.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.24  
DUTIES OF TOWN SUPERVISORS**

Sections  
45.24.010 through 45.24.060 Repealed.

**45.24.010 through 45.24.060 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.28  
DUTIES OF TOWN CLERK**

Sections  
45.28.010 through 45.28.100 Repealed.

**45.28.010 through 45.28.100 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.32**  
**DUTIES OF TOWN TREASURER**

## Sections

45.32.010 through 45.32.090 Repealed.

**45.32.010 through 45.32.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.36**  
**POUNDS AND POUNDMASTERS**

## Sections

45.36.010 through 45.36.030 Repealed.

**45.36.010 through 45.36.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.40**  
**DUTIES OF TOWN OFFICERS AT ELECTIONS**

## Sections

45.40.010 Repealed.  
45.40.030 Repealed.

**45.40.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**45.40.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.44**  
**COMPENSATION OF OFFICERS**

## Sections

45.44.010 Repealed.

**45.44.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.48**  
**DUTY OF RETIRING OFFICERS**

## Sections

45.48.010 through 45.48.040 Repealed.

**45.48.010 through 45.48.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.52**  
**CLAIMS AGAINST TOWNS**

## Sections

45.52.010 through 45.52.090 Repealed.

**45.52.010 through 45.52.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.54**  
**ASSESSMENT OF PROPERTY**

## Sections

45.54.010 Repealed.  
45.54.020 Repealed.

**45.54.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**45.54.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.56**  
**TOWN TAXES AND CHARGES**

## Sections

45.56.010 through 45.56.080 Repealed.

**45.56.010 through 45.56.080 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.64**  
**ACTIONS BY OR AGAINST TOWNS**

## Sections

45.64.010 through 45.64.080 Repealed.

**45.64.010 through 45.64.080 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.72**  
**MISCELLANEOUS PROVISIONS**

## Sections

45.72.010 through 45.72.070 Repealed.

**45.72.010 through 45.72.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.76**  
**DISORGANIZATION OF TOWNSHIPS**

## Sections

45.76.020 through 45.76.100 Repealed.

**45.76.020 through 45.76.100 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.80**  
**COUNTY-WIDE DISORGANIZATION OF TOWNSHIPS**

Sections

45.80.010 through 45.80.100 Repealed.

**45.80.010 through 45.80.100 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 45.82**  
**AD VALOREM TAXES—SPECIAL ASSESSMENTS—GIFTS—DISORGANIZATION ELECTION**

Sections

45.82.010 Repealed.  
45.82.020 Repealed.

**45.82.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**45.82.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Title 46**  
**MOTOR VEHICLES**

**Chapters**

- 46.01** Department of licensing.
- 46.04** Definitions.
- 46.09** Off-road and nonhighway vehicles.
- 46.10** Snowmobiles.
- 46.12** Certificates of ownership and registration.
- 46.16** Vehicle licenses.
- 46.20** Drivers' licenses—Identicards.
- 46.37** Vehicle lighting and other equipment.
- 46.44** Size, weight, load.
- 46.52** Accidents—Reports—Abandoned vehicles.
- 46.55** Towing and impoundment.
- 46.61** Rules of the road.
- 46.63** Disposition of traffic infractions.
- 46.68** Disposition of revenue.
- 46.70** Unfair business practices—Dealers' licenses.
- 46.72A** Limousines.
- 46.74** Ride sharing.
- 46.87** Proportional registration.

**Chapter 46.01**  
**DEPARTMENT OF LICENSING**

Sections

46.01.260 Destruction of records by director.

**46.01.260 Destruction of records by director.** (1) Except as provided in subsection (2) of this section, the

director, in his or her discretion, may destroy applications for vehicle licenses, copies of vehicle licenses issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, records or supporting papers on file in his or her office which have been microfilmed or photographed or are more than five years old. If the applications for vehicle licenses are renewal applications, the director may destroy such applications when the computer record thereof has been updated.

(2)(a) The director shall not destroy records of convictions or adjudications of RCW 46.61.520 and 46.61.522 and shall maintain such records permanently on file.

(b) The director shall not, within ten years from the date of conviction, adjudication, or entry of deferred prosecution, destroy records of the following:

(i) Convictions or adjudications of the following offenses: RCW 46.61.502 or 46.61.504;

(ii) If the offense was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection, convictions or adjudications of the following offenses: RCW 46.61.500 or 46.61.5249 or any other violation that was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection; or

(iii) Deferred prosecutions granted under RCW 10.05.120.

(c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject to this subsection shall be considered "alcohol-related" offenses. [1997 c 66 § 11; 1996 c 199 § 4; 1994 c 275 § 14; 1984 c 241 § 1; 1971 ex.s. c 22 § 1; 1965 ex.s. c 170 § 45; 1961 c 12 § 46.08.120. Prior: 1955 c 76 § 1; 1951 c 241 § 1; 1937 c 188 § 77; RRS § 6312-77. Formerly RCW 46.08.120.]

**Severability—1996 c 199:** See note following RCW 9.94A.120.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Chapter 46.04**  
**DEFINITIONS**

Sections

46.04.169 Electric-assisted bicycle.  
46.04.215 Ignition interlock device—Other biological or technical device—Definitions. (*Effective January 1, 1998.*)

**46.04.169 Electric-assisted bicycle.** "Electric-assisted bicycle" means a bicycle with two or three wheels, a saddle, fully operative pedals for human propulsion, and an electric motor. The electric-assisted bicycle's electric motor must have a power output of no more than one thousand watts, be incapable of propelling the device at a speed of more than twenty miles per hour on level ground, and be incapable of further increasing the speed of the device when human power alone is used to propel the device beyond twenty miles per hour. [1997 c 328 § 1.]

**46.04.215 Ignition interlock device—Other biological or technical device—Definitions.** (*Effective January 1, 1998.*) "Ignition interlock device" means breath alcohol analyzing ignition equipment, certified by the state patrol, designed to prevent a motor vehicle from being operated by



a person who has consumed an alcoholic beverage, and "other biological or technical device" means any device meeting the standards of the National Highway Traffic Safety Administration or the state patrol, designed to prevent the operation of a motor vehicle by a person who is impaired by alcohol or drugs. The state patrol shall by rule provide standards for the certification, installation, repair, and removal of the devices. [1997 c 229 § 9; 1994 c 275 § 23; 1987 c 247 § 3. Formerly RCW 46.20.730.]

**Effective date—1997 c 229:** See note following RCW 10.05.090.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

## Chapter 46.09

### OFF-ROAD AND NONHIGHWAY VEHICLES

#### Sections

46.09.070 Application for ORV use permit.

**46.09.070 Application for ORV use permit.** (1) Application for annual or temporary ORV use permits shall be made to the department or its authorized agent in such manner and upon such forms as the department shall prescribe and shall state the name and address of each owner of the off-road vehicle.

(2) An application for an annual permit shall be signed by at least one owner, and shall be accompanied by a fee of five dollars. Upon receipt of the annual permit application and the application fee, the off-road vehicle shall be assigned a use permit number tag or decal, which shall be affixed to the off-road vehicle in a manner prescribed by the department. The annual permit is valid for a period of one year and is renewable each year in such manner as the department may prescribe for an additional period of one year upon payment of a renewal fee of five dollars.

Any person acquiring an off-road vehicle for which an annual permit has been issued who desires to continue to use the permit must, within fifteen days of the acquisition of the off-road vehicle, make application to the department or its authorized agent for transfer of the permit, and the application shall be accompanied by a transfer fee of one dollar and twenty-five cents.

(3) A temporary use permit is valid for sixty days. Application for a temporary permit shall be accompanied by a fee of two dollars. The permit shall be carried on the vehicle at all times during its operation in the state.

(4) Except as provided in RCW 46.09.050, any out-of-state operator of an off-road vehicle shall, when operating in this state, comply with this chapter, and if an ORV use permit is required under this chapter, the operator shall obtain an annual or temporary permit and tag. [1997 c 241 § 1; 1986 c 206 § 4; 1977 ex.s. c 220 § 6; 1972 ex.s. c 153 § 8; 1971 ex.s. c 47 § 12.]

**Effective date—1986 c 206:** See note following RCW 46.09.020.

**Purpose—1972 ex.s. c 153:** See RCW 67.32.080.

## Chapter 46.10 SNOWMOBILES

#### Sections

46.10.040 Application for registration—Annual fee—Registration number—Term—Renewal—Transfer—Nonresident permit—Decals.

**46.10.040 Application for registration—Annual fee—Registration number—Term—Renewal—Transfer—Nonresident permit—Decals.** Application for registration shall be made to the department in the manner and upon forms the department prescribes, and shall state the name and address of each owner of the snowmobile to be registered, and shall be signed by at least one such owner, and shall be accompanied by an annual registration fee to be established by the commission, after consultation with the committee and any state-wide snowmobile user groups. The fee shall be fifteen dollars pending action by the commission to increase the fee. The commission shall increase the fee by two dollars and fifty cents effective September 30, 1996, and the commission shall increase the fee by another two dollars and fifty cents effective September 30, 1997. After the fee increase effective September 30, 1997, the commission shall not increase the fee. Upon receipt of the application and the application fee, the snowmobile shall be registered and a registration number assigned, which shall be affixed to the snowmobile in a manner provided in RCW 46.10.070.

The registration provided in this section shall be valid for a period of one year. At the end of the period of registration, every owner of a snowmobile in this state shall renew his or her registration in the manner the department prescribes, for an additional period of one year, upon payment of the annual registration fee as determined by the commission.

Any person acquiring a snowmobile already validly registered under the provisions of this chapter must, within ten days of the acquisition or purchase of the snowmobile, make application to the department for transfer of the registration, and the application shall be accompanied by a transfer fee of one dollar and twenty-five cents.

A snowmobile owned by a resident of another state or Canadian province where registration is not required by law may be issued a nonresident registration permit valid for not more than sixty days. Application for the permit shall state the name and address of each owner of the snowmobile to be registered and shall be signed by at least one owner and shall be accompanied by a registration fee of five dollars. The registration permit shall be carried on the vehicle at all times during its operation in this state.

The registration fees provided in this section shall be in lieu of any personal property or excise tax heretofore imposed on snowmobiles by this state or any political subdivision thereof, and no city, county, or other municipality, and no state agency shall hereafter impose any other registration or license fee on any snowmobile in this state.

The department shall make available a pair of uniform decals consistent with the provisions of RCW 46.10.070. In addition to the registration fee provided in this section the department shall charge each applicant for registration the actual cost of the decal. The department shall make avail-

able replacement decals for a fee equivalent to the actual cost of the decals. [1997 c 241 § 2; 1996 c 164 § 1; 1986 c 16 § 2; 1982 c 17 § 2; 1979 ex.s. c 182 § 5; 1973 1st ex.s. c 128 § 1; 1972 ex.s. c 153 § 20; 1971 ex.s. c 29 § 4.]

**Purpose—Policy statement as to certain state lands—1972 ex.s. c 153:** See RCW 67.32.080.

## Chapter 46.12 CERTIFICATES OF OWNERSHIP AND REGISTRATION

### Sections

- 46.12.010 Certificates required to operate and sell vehicles—Manufacturers or dealers, security interest, how perfected.
- 46.12.042 Emergency medical services fee. (*Effective January 1, 1998.*)
- 46.12.080 Procedure on installation of different motor—Penalty.
- 46.12.170 Procedure when security interest is granted on vehicle.
- 46.12.181 Duplicate for lost, stolen, mutilated, etc., certificates.
- 46.12.370 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use.

**46.12.010 Certificates required to operate and sell vehicles—Manufacturers or dealers, security interest, how perfected.** It shall be unlawful for any person to operate any vehicle in this state under a certificate of license registration of this state without securing and having in full force and effect a certificate of ownership therefor that contains the name of the registered owner exactly as it appears on the certificate of license registration and it shall further be unlawful for any person to sell or transfer any vehicle without complying with all the provisions of this chapter relating to certificates of ownership and license registration of vehicles: PROVIDED, No certificate of title need be obtained for a vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing and demonstration, or a vehicle used by a manufacturer solely for testing: PROVIDED, That a security interest in a vehicle held as inventory by a manufacturer or dealer shall be perfected in accordance with RCW 62A.9-302(1) and no endorsement on the certificate of title shall be necessary for perfection: AND PROVIDED FURTHER, That nothing in this title shall be construed to prevent any person entitled thereto from securing a certificate of ownership upon a vehicle without securing a certificate of license registration and vehicle license plates, when, in the judgment of the director of licensing, it is proper to do so. [1997 c 241 § 3; 1979 c 158 § 132; 1975 c 25 § 6; 1967 c 140 § 1; 1967 c 32 § 6; 1961 c 12 § 46.12.010. Prior: 1937 c 188 § 2; RRS § 6312-2.]

**Effective date—1967 c 140:** "This act shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date." [1967 c 140 § 11.]

*Definitions:* RCW 46.12.005.

**46.12.042 Emergency medical services fee.** (*Effective January 1, 1998.*) (1) Upon the retail sale or lease of any new or used motor vehicle by a vehicle dealer, the dealer shall collect from the consumer an emergency medical services fee of six dollars and fifty cents, two dollars and fifty cents of which shall be an administrative fee to be

retained by the vehicle dealer. The remainder of the fee shall be forwarded with the required title application and all other fees to the department of licensing, or any of its authorized agents. The four-dollar fee collected in this section shall be deposited in the emergency medical services and trauma care system trust account created in RCW 70.168.040. The administrative fee charged by a dealer shall not be considered a violation of RCW 46.70.180(2).

(2) If a fee is not imposed under subsection (1) of this section, there is hereby imposed a fee of six dollars and fifty cents at the time of application for (a) an original title or transfer of title issued on any motor vehicle pursuant to this chapter or chapter 46.09 RCW, or (b) an original transaction or transfer of ownership transaction of a vehicle under chapter 46.10 RCW. The department of licensing or any of its authorized agents shall collect the fee when processing these transactions. The fee shall be transmitted to the emergency medical services and trauma care system trust account created in RCW 70.168.040.

(3) This section does not apply to a motor vehicle that has been declared a total loss by an insurer or self-insurer unless an application for certificate of ownership or license registration is made to the department of licensing after the declaration of total loss. [1997 c 331 § 5.]

**Effective date—1997 c 331:** See note following RCW 70.168.135.

**46.12.080 Procedure on installation of different motor—Penalty.** Any person holding the certificate of ownership for a motorcycle or any vehicle registered by its motor number in which there has been installed a new or different motor than that with which it was issued certificates of ownership and license registration shall forthwith and within five days after such installation forward and surrender such certificates to the department, together with an application for issue of corrected certificates of ownership and license registration and a fee of one dollar and twenty-five cents, and a statement of the disposition of the former motor. The possession by any person of any such certificates for such vehicle in which a new or different motor has been installed, after five days following such installation, shall be prima facie evidence of a violation of the provisions of this chapter and shall constitute a misdemeanor. [1997 c 241 § 4; 1979 ex.s. c 113 § 1; 1961 c 12 § 46.12.080. Prior: 1959 c 166 § 5; prior: 1951 c 269 § 3; 1947 c 164 § 3(c); 1939 c 182 § 1(c); 1937 c 188 § 5(c); Rem. Supp. 1947 § 6312-5(c).]

**46.12.170 Procedure when security interest is granted on vehicle.** If, after a certificate of ownership is issued, a security interest is granted on the vehicle described therein, the registered owner or secured party shall, within ten days thereafter, present an application to the department, to which shall be attached the certificate of ownership last issued covering the vehicle, or such other documentation as may be required by the department, which application shall be upon a form approved by the department and shall be accompanied by a fee of one dollar and twenty-five cents in addition to all other fees. The department, if satisfied that there should be a reissue of the certificate, shall note such change upon the vehicle records and issue to the secured party a new certificate of ownership.

Whenever there is no outstanding secured obligation and no commitment to make advances and incur obligations or otherwise give value, the secured party must assign the certificate of ownership to the debtor or the debtor's assignee or transferee, and transmit the certificate to the department with an accompanying fee of one dollar and twenty-five cents in addition to all other fees. The department shall then issue a new certificate of ownership and transmit it to the owner. If the affected secured party fails to either assign the certificate of ownership to the debtor or the debtor's assignee or transferee or transmit the certificate of ownership to the department within ten days after proper demand, that secured party shall be liable to the debtor or the debtor's assignee or transferee for one hundred dollars, and in addition for any loss caused to the debtor or the debtor's assignee or transferee by such failure. [1997 c 432 § 5; 1997 c 241 § 5; 1994 c 262 § 6; 1979 ex.s. c 113 § 2; 1975 c 25 § 13; 1967 c 140 § 4; 1961 c 12 § 46.12.170. Prior: 1951 c 269 § 4; 1947 c 164 § 5; 1939 c 182 § 2; 1937 c 188 § 7; Rem. Supp. 1947 § 6312-7.]

**Reviser's note:** This section was amended by 1997 c 241 § 5 and by 1997 c 432 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1967 c 140:** See note following RCW 46.12.010.

*Definitions:* RCW 46.12.005.

**46.12.181 Duplicate for lost, stolen, mutilated, etc., certificates.** If a certificate of ownership is lost, stolen, mutilated, or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon tender of one dollar and twenty-five cents in addition to all other fees and upon furnishing information satisfactory to the department. The duplicate certificate of ownership shall contain the legend, "duplicate." It shall be provided to the first priority secured party named in it or, if none, to the owner.

A person recovering an original certificate of ownership for which a duplicate has been issued shall promptly surrender the original certificate to the department. [1997 c 241 § 7; 1994 c 262 § 7; 1990 c 250 § 31; 1969 ex.s. c 170 § 1; 1967 c 140 § 8.]

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Effective date—1967 c 140:** See note following RCW 46.12.010.

*Definitions:* RCW 46.12.005

**46.12.370 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use.** In addition to any other authority which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1) The manufacturers of motor vehicles, or their authorized agents, to be used to enable those manufacturers to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(3) A commercial parking company requiring the names and addresses of registered owners to notify them of outstanding parking violations. Subject to the disclosure agreement provisions of RCW 46.12.380 and the requirements of Executive Order 97-01, the department may provide only the parts of the list that are required for completion of the work required of the company;

(4) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle excise tax, licensing, title, and registration information to motor vehicle dealers; or

(5) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing.

In the event a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer, governmental agency, commercial parking company, authorized agent, contractor, financial institution, or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing. [1997 c 432 § 6; 1997 c 33 § 1; 1982 c 215 § 1.]

**Reviser's note:** This section was amended by 1997 c 33 § 1 and by 1997 c 432 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

## Chapter 46.16 VEHICLE LICENSES

### Sections

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Registration fees: RCW 46.12.040, 46.12.042.

#### 46.16.010 Licenses and plates required—Penalties—

**Exceptions.** (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided. Failure to make initial registration before operation on the highways of this state is a misdemeanor, and any person convicted thereof shall be punished by a fine of no less than three hundred thirty dollars, no part of which may be suspended or deferred. Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(2) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and a fine equal to twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and a fine equal to four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed shall be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(3) These provisions shall not apply to the following vehicles:

(a) Electric-assisted bicycles;

(b) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(c) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(d) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(e) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(4) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar. [1997 c 328 § 2; 1997 c 241 § 13; 1996 c 184 § 1; 1993 c 238 § 1; 1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010. Prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

**Rules of court:** Monetary penalty schedule—JTIR 6.2.

**Reviser's note:** This section was amended by 1997 c 241 § 13 and by 1997 c 328 § 2, each without reference to the other. Both amendments

are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1996 c 184 §§ 1-6:** "Sections 1 through 6 of this act take effect January 1, 1997." [1996 c 184 § 8.]

**Legislative intent—1989 c 192:** "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

**Effective date—1989 c 192:** "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

**46.16.028 "Resident" defined—Vehicle registration required.**

(1) For the purposes of vehicle license registration, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(2) The term "Washington public assistance programs" referred to in subsection (1)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and temporary assistance for needy families.

(3) A resident of the state shall register under chapters 46.12 and 46.16 RCW a vehicle to be operated on the highways of the state. New Washington residents shall be allowed thirty days from the date they become residents as defined in this section to procure Washington registration for their vehicles. This thirty-day period shall not be combined with any other period of reciprocity provided for in this chapter or chapter 46.85 RCW. [1997 c 59 § 7; 1987 c 142 § 1; 1986 c 186 § 2; 1985 c 353 § 1.]

**Effective date—1985 c 353:** "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, except for section 1 of this act, which shall take effect September 1, 1985." [1985 c 353 § 6.]

**46.16.125 Mileage fees on stages—Penalty.** In addition to the fees required by RCW 46.16.070, operators of auto stages with seating capacity over six shall pay, at the time they file gross earning returns with the utilities and transportation commission, the sum of fifteen cents for each one hundred vehicle miles operated by each auto stage over the public highways of this state. However, in the case of each auto stage propelled by steam, electricity, natural gas, diesel oil, butane, or propane, the payment required in this section is twenty cents per one hundred miles of such

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operation. The commission shall transmit all sums so collected to the state treasurer, who shall deposit the same in the motor vehicle fund. Any person failing to make any payment required by this section is subject to a penalty of one hundred percent of the payment due in this section, in addition to any penalty provided for failure to submit a report. Any penalties so collected shall be credited to the public service revolving fund. [1997 c 215 § 2; 1967 ex.s. c 83 § 60; 1961 c 12 § 46.16.125. Prior: 1951 c 269 § 14.]

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

**46.16.210 Original applications—Renewals—Fees—**

**Preissuance, when.** (1) Upon receipt of the application and proper fee for original vehicle license, the director shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county auditor or other agent to effectively secure the correction of such error, who shall return the same corrected to the director.

(2) Application for the renewal of a vehicle license shall be made to the director or his agents, including county auditors, by the registered owner on a form prescribed by the director. The application must be accompanied by the certificate of registration for the last registration period in which the vehicle was registered in Washington unless the applicant submits a preprinted application mailed from Olympia, and the payment of such license fees and excise tax as may be required by law. Such application shall be handled in the same manner and the fees transmitted to the state treasurer in the same manner as in the case of an original application. Any such application which upon validation becomes a renewal certificate need not have entered upon it the name of the lien holder, if any, of the vehicle concerned.

(3) Persons expecting to be out of the state during the normal renewal period of a vehicle license may secure renewal of such vehicle license and have license plates or tabs preissued by making application to the director or his agents upon forms prescribed by the director. The application must be accompanied by the certificate of registration for the last registration period in which the vehicle was registered in Washington and be accompanied by such license fees, and excise tax as may be required by law.

(4) Application for the annual renewal of a vehicle license number plate to the director or the director's agents shall not be required for those vehicles owned, rented, or leased by the state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington or a governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior. [1997 c 241 § 8; 1994 c 262 § 9; 1977 c 8 § 1. Prior: 1975 1st ex.s. c 169 § 6; 1975 1st ex.s. c 118 § 8; 1969 ex.s. c 75 § 1; 1961 c 12 § 46.16.210; prior: 1957 c 273 § 5; 1955 c 89 § 2; 1953 c 252 § 3; 1947 c 164 § 11; 1937 c 188 § 34; Rem. Supp. 1947 § 6312-34.]

**Effective date—Severability—1975 1st ex.s. c 118:** See notes following RCW 46.16.006.

**46.16.220 Time of renewal of licenses—Duration.**

Vehicle licenses and vehicle license number plates may be renewed for the subsequent registration year up to eighteen months before the current expiration date and must be used and displayed from the date of issue or from the day of the expiration of the preceding registration year, whichever date is later. [1997 c 241 § 9; 1991 c 339 § 20; 1975 1st ex.s. c 118 § 9; 1969 ex.s. c 170 § 9; 1961 c 12 § 46.16.220. Prior: 1957 c 261 § 8; 1955 c 89 § 1; 1953 c 252 § 4; 1947 c 164 § 12; 1937 c 188 § 35; Rem. Supp. 1947 § 6312-35; 1921 c 96 § 7, part; RRS § 6318, part; 1921 c 6 § 1, part; 1916 c 142 § 7, part.]

**Effective date—Severability—1975 1st ex.s. c 118:** See notes following RCW 46.16.006.

**46.16.233 Standard background—Periodic replacement.**

Except for those license plates issued under RCW 46.16.305(1) before January 1, 1987, under RCW 46.16.305(3), and to commercial vehicles with a gross weight in excess of twenty-six thousand pounds, effective with vehicle registrations due or to become due on January 1, 2001, all vehicle license plates must be issued on a standard background, as designated by the department. Additionally, to ensure maximum legibility and reflectivity, the department shall periodically provide for the replacement of license plates. Frequency of replacement shall be established in accordance with empirical studies documenting the longevity of the reflective materials used to make license plates. [1997 c 291 § 2.]

**46.16.265 Replacement certificate.**

If a certificate of license registration is lost, stolen, mutilated, or destroyed or becomes illegible, the registered owner or owners, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon tender of one dollar and twenty-five cents in addition to all other fees and upon furnishing information satisfactory to the department. The duplicate of the license registration shall contain the legend, "duplicate."

A person recovering an original certificate of license registration for which a duplicate has been issued shall promptly surrender the original certificate to the department. [1997 c 241 § 6.]

**46.16.270 Replacement of plates—Fee.**

The total replacement plate fee shall be deposited in the motor vehicle fund.

Upon the loss, defacement, or destruction of one or both of the vehicle license number plates issued for any vehicle where more than one plate was originally issued or where one or both have become so illegible or in such a condition as to be difficult to distinguish, or upon the owner's option, the owner of the vehicle shall make application for new vehicle license number plates upon a form furnished by the director. The application shall be filed with the director or the director's authorized agent, accompanied by the certificate of license registration of the vehicle and a fee in the amount of three dollars per plate, whereupon the director, or the director's authorized agent, shall issue new vehicle license number plates to the applicant. It shall be accompanied by a fee of two dollars for a new motorcycle license

number plate. In the event the director has issued license period tabs or a windshield emblem instead of vehicle license number plates, and upon the loss, defacement, or destruction of the tabs or windshield emblem, application shall be made on a form provided by the director and in the same manner as above described, and shall be accompanied by a fee of one dollar for each pair of tabs or for each windshield emblem, whereupon the director shall issue to the applicant a duplicate pair of tabs, year tabs, and when necessary month tabs or a windshield emblem to replace those lost, defaced, or destroyed. For vehicles owned, rented, or leased by the state of Washington or by any county, city, town, school district, or other political subdivision of the state of Washington or United States government, or owned or leased by the governing body of an Indian tribe as defined in RCW 46.16.020, a fee shall be charged for replacement of a vehicle license number plate only to the extent required by the provisions of RCW 46.16.020, 46.16.061, 46.16.237, and 46.01.140. For vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty, the payment of any fee for the replacement of a vehicle license number plate shall not be required. [1997 c 291 § 3; 1990 c 250 § 32; 1987 c 178 § 2. Prior: 1986 c 280 § 4; 1986 c 30 § 3; 1975 1st ex.s. c 169 § 7; 1965 ex.s. c 78 § 1; 1961 c 12 § 46.16.270; prior: 1951 c 269 § 6; 1947 c 164 § 13; 1937 c 188 § 37; Rem. Supp. 1947 § 6312-37; 1929 c 99 § 6; 1921 c 96 § 14; 1919 c 59 § 8; 1915 c 142 § 14; RRS § 6325.]

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.16.290 License certificate and plates follow vehicle on transfer—Exceptions.**

In any case of a valid sale or transfer of the ownership of any vehicle, the right to the certificates properly transferable therewith, except as provided in RCW 46.16.280, and to the vehicle license plates passes to the purchaser or transferee. It is unlawful for the holder of such certificates, except as provided in RCW 46.16.280, or vehicle license plates to fail, neglect, or refuse to endorse the certificates and deliver the vehicle license plates to the purchaser or transferee. If the sale or transfer is of a vehicle licensed by the state or any county, city, town, school district, or other political subdivision entitled to exemption as provided by law, or, if the vehicle is licensed with personalized plates, amateur radio operator plates, medal of honor plates, disabled person plates, disabled veteran plates, prisoner of war plates, or other special license plates issued under RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, the vehicle license plates therefor shall be retained and may be displayed upon a vehicle obtained in replacement of the vehicle so sold or transferred. [1997 c 291 § 4; 1986 c 18 § 18; 1983 c 27 § 2; 1961 c 12 § 46.16.290. Prior: 1937 c 188 § 39; RRS § 6312-39; 1931 c 138 § 2; 1929 c 99 § 3; 1921 c 96 § 8; 1919 c 59 § 5; 1917 c 155 § 5; 1915 c 142 § 8; RRS § 6319.]

**Effective date—1986 c 18:** See RCW 46.87.901.

**46.16.301 Baseball stadium license plates.** The department shall create, design, and issue a special baseball stadium license plate that may be used in lieu of regular or

personalized license plates for motor vehicles required to display two motor vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates shall commemorate the construction of a baseball stadium, as defined in RCW 82.14.0485. The department shall also issue to each recipient of a special baseball stadium license plate a certificate of participation in the construction of the baseball stadium. [1997 c 291 § 5; 1995 3rd sp.s. c 1 § 102; 1994 c 194 § 2; 1990 c 250 § 1.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Effective dates—1990 c 250 §§ 1-13:** "Sections 1 through 9, and 11 through 13 of this act shall take effect on January 1, 1991. Section 10 of this act shall take effect on July 1, 1990." [1990 c 250 § 93.]

**Severability—1990 c 250:** "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." [1990 c 250 § 92.]

*State contribution for baseball stadium limited: RCW 82.14.0486.*

**46.16.305 Special license plates—Continuance of earlier issues—Conditions for current issues.** The department shall continue to issue the categories of special plates issued by the department under the sections repealed under section 12 (1) through (7), chapter 250, Laws of 1990. Special license plates issued under those repealed sections before January 1, 1991, are valid to the extent and under the conditions provided in those repealed sections. The following conditions, limitations, or requirements apply to certain special license plates issued after January 1, 1991:

(1) A horseless carriage plate and a plate or plates issued for collectors' vehicles more than thirty years old, upon payment of the initial fees required by law and the additional special license plate fee established by the department, are valid for the life of the vehicle for which application is approved by the department. When a single plate is issued, it shall be displayed on the rear of the vehicle.

(2) The department may issue special license plates denoting amateur radio operator status only to persons having a valid official radio operator license issued by the federal communications commission.

(3) The department shall issue one set of special license plates to each resident of this state who has been awarded the Congressional Medal of Honor for use on a passenger vehicle registered to that person. The department shall issue the plate without the payment of licensing fees and motor vehicle excise tax.

(4) The department may issue for use on only one motor vehicle owned by the qualified applicant special license plates denoting that the recipient of the plate is a survivor of the attack on Pearl Harbor on December 7, 1941, to persons meeting all of the following criteria:

(a) Is a resident of this state;

(b) Was a member of the United States Armed Forces on December 7, 1941;

(c) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(d) Received an honorable discharge from the United States Armed Forces; and

(e) Is certified by a Washington state chapter of the Pearl Harbor survivors association as satisfying the qualifications in (c) of this subsection.

The department may issue such plates to the surviving spouse of any deceased Pearl Harbor survivor who met the requirements of this subsection. If the surviving spouse remarries, he or she shall return the special plates to the department within fifteen days and apply for regular plates. The surviving spouse must be a resident of this state.

The department shall issue these plates upon payment by the applicant of all other license fees, but the department may not set or charge an additional fee for these special license plates.

(5) The department shall replace, free of charge, special license plates issued under subsections (3) and (4) of this section if they are lost, stolen, damaged, defaced, or destroyed. Such plates shall remain with the persons upon transfer or other disposition of the vehicle for which they were initially issued, and may be used on another vehicle registered to the recipient in accordance with the provisions of RCW 46.16.316(1). [1997 c 291 § 6; 1997 c 241 § 10; 1990 c 250 § 2.]

**Reviser's note:** This section was amended by 1997 c 241 § 10 and by 1997 c 291 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2) For rule of construction, see RCW 1.12.025(1).

**Finding—1997 c 291:** "The legislature finds that the proliferation of special license plate series has decreased the ready identification of vehicles by law enforcement, and increased the amount of computer programming conducted by the department of licensing, thereby increasing costs. Furthermore, rarely has the actual demand for special license plates met the requesters' projections. Most importantly, special plates detract from the primary purpose of license plates, that of vehicle identification." [1997 c 291 § 1.]

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.16.309 Special license plates—Application.** Persons applying to the department for special license plates shall apply on forms obtained from the department and in accordance with RCW 46.16.040. The applicant shall provide all information as is required by the department in order to determine the applicant's eligibility for the special license plates. [1997 c 291 § 7; 1990 c 250 § 3.]

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.16.313 Special license plates—Fees.** (1) The department may establish a fee for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. Until December 31, 1997, the fee shall not exceed thirty-five dollars, but effective with vehicle registrations due or to become due on January 1, 1998, the department may adjust the fee to no more than forty dollars. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been



requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) Until December 31, 1997, in addition to all fees and taxes required to be paid upon application, registration, and renewal registration of a motor vehicle, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) Effective with vehicle registrations due or to become due on January 1, 1998, in addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) Effective with annual renewals due or to become due on January 1, 1999, in addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(5) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with annual renewals due or to become due on January 1, 1999, in addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be

distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund. [1997 c 291 § 8; 1996 c 165 § 506; 1995 3rd sp.s. c 1 § 103; 1994 c 194 § 4; 1990 c 250 § 4.]

**Severability—1996 c 165:** "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." [1996 c 165 § 510.]

**Effective date—1996 c 165:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 165 § 511.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

*State contribution for baseball stadium limited: RCW 82.14.0486.*

**46.16.314 Special license plates—Authority to continue.** After a period of three years from the initial issuance of a special license plate series, the department has the sole discretion, based upon the number of sales to date, to determine whether or not to continue issuing the special series. [1997 c 291 § 9.]

**46.16.316 Special license plates—Transfer of vehicle—Replacement plates.** Except as provided in RCW 46.16.305:

(1) When a person who has been issued a special license plate or plates under RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, sells, trades, or otherwise transfers or releases ownership of the vehicle upon which the special license plate or plates have been displayed, he or she shall immediately report the transfer of such plate or plates to an acquired vehicle or vehicle eligible for such plates pursuant to departmental rule, or he or she shall surrender such plates to the department immediately if such surrender is required by departmental rule. If a person applies for a transfer of the plate or plates to another eligible vehicle, a transfer fee of five dollars shall be charged in addition to all other applicable fees. Such transfer fees shall be deposited in the motor vehicle fund. Failure to surrender the plates when required is a traffic infraction.

(2) If the special license plate or plates issued by the department become lost, defaced, damaged, or destroyed, application for a replacement special license plate or plates shall be made and fees paid as provided by law for the replacement of regular license plates. [1997 c 291 § 10; 1990 c 250 § 5.]

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.16.319 Veterans and military personnel—Emblems.** (1) Veterans discharged under honorable conditions (veterans) and individuals serving on active duty in the



United States armed forces (active duty military personnel) may purchase a veterans remembrance emblem or campaign medal emblem. The emblem is to be displayed on vehicle license plates in the manner described by the department, existing vehicular licensing procedures, and current laws.

(2) Veterans and active duty military personnel who served during periods of war or armed conflict may purchase a remembrance emblem depicting campaign ribbons which they were awarded.

(3) The following campaign ribbon remembrance emblems are available:

- (a) World War I victory medal;
- (b) World War II Asiatic-Pacific campaign medal;
- (c) World War II European-African Middle East campaign medal;
- (d) World War II American campaign medal;
- (e) Korean service medal;
- (f) Vietnam service medal;
- (g) Armed forces expeditionary medal awarded after 1958; and
- (h) Southwest Asia medal.

The director may issue additional campaign ribbon emblems by rule as authorized decorations by the United States department of defense.

(4) Veterans or active duty military personnel requesting a veteran remembrance emblem or campaign medal emblem or emblems must:

- (a) Pay a prescribed fee set by the department; and
- (b) Show proof of eligibility through:
  - (i) Providing a DD-214 or discharge papers if a veteran;
  - (ii) Providing a copy of orders awarding a campaign ribbon if an individual serving on military active duty; or
  - (iii) Attesting in a notarized affidavit of their eligibility as required under this section.

(5) Veterans or active duty military personnel who purchase a veteran remembrance emblem or a campaign medal emblem must be the legal or registered owner of the vehicle on which the emblem is to be displayed. [1997 c 234 § 1; 1991 c 339 § 11; 1990 c 250 § 6.]

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**46.16.350 Amateur radio operator plates—Expiration or revocation of radio license—Penalty.** Any radio amateur operator who holds a special call letter license plate as issued under RCW 46.16.305, and who has allowed his or her federal communications commission license to expire, or has had it revoked, must notify the director in writing within thirty days and surrender his or her call letter license plate. Failure to do so is a traffic infraction. [1997 c 291 § 11; 1990 c 250 § 11; 1979 ex.s. c 136 § 49; 1967 c 32 § 24; 1961 c 12 § 46.16.350. Prior: 1957 c 145 § 4.]

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**46.16.630 Moped registration.** Application for registration of a moped shall be made to the department of

licensing in such manner and upon such forms as the department shall prescribe, and shall state the name and address of each owner of the moped to be registered, the vehicle identification number, and such other information as the department may require, and shall be accompanied by a registration fee of three dollars. Upon receipt of the application and the application fee, the moped shall be registered and a registration number assigned, which shall be affixed to the moped in the manner as provided by rules adopted by the department. The registration provided in this section shall be valid for a period of twelve months.

Every owner of a moped in this state shall renew the registration, in such manner as the department shall prescribe, for an additional period of twelve months, upon payment of a renewal fee of three dollars.

Any person acquiring a moped already validly registered must, within fifteen days of the acquisition or purchase of the moped, make application to the department for transfer of the registration, and the application shall be accompanied by a transfer fee of one dollar and twenty-five cents.

The registration fees provided in this section shall be in lieu of any personal property tax or the vehicle excise tax imposed by chapter 82.44 RCW.

The department shall, at the time the registration number is assigned, make available a decal or other identifying device to be displayed on the moped. A fee of one dollar and fifty cents shall be charged for the decal or other identifying device.

The provisions of RCW 46.01.130 and 46.01.140 shall apply to applications for the issuance of registration numbers or renewals or transfers thereof for mopeds as they do to the issuance of vehicle licenses, the appointment of agents, and the collection of application fees. Except for the fee collected pursuant to RCW 46.01.140, all fees collected under this section shall be deposited in the motor vehicle fund. [1997 c 241 § 11; 1979 ex.s. c 213 § 5.]

*Additional plate fee:* RCW 46.16.650.

*Drivers' license, motorcycle endorsement, moped exemption:* RCW 46.20.500.

*Operation and safety standards for mopeds:* RCW 46.61.710, 46.61.720.

**46.16.650 License plates—Additional fee.** In addition to the basic fees for new vehicle registrations provided in RCW 46.16.060, 46.16.065, 46.16.505, and 46.16.630 and the license fees for new vehicle registrations provided in RCW 46.16.070 and 46.16.085, persons purchasing license plates shall pay an additional fee of one dollar per plate, to be deposited in the motor vehicle fund. [1997 c 291 § 12; 1987 c 178 § 1. Prior: 1986 c 280 § 1.]

*Additional plate fee:* RCW 46.16.650.

## Chapter 46.20

### DRIVERS' LICENSES—IDENTICARDS

#### Sections

- 46.20.005 Driving without a license—Misdemeanor, when.
- 46.20.015 Driving without a license—Traffic infraction, when.
- 46.20.021 "Resident" for driver's license purposes—Surrender of other license—Local license not required.
- 46.20.070 Juvenile agricultural driving permits.
- 46.20.291 Authority to suspend licenses—Grounds.
- 46.20.311 Duration of license sanctions—Reissuance or renewal.

- 46.20.500 Motorcycle endorsement—Exceptions.  
 46.20.720 Ignition interlocks, biological, technical devices—Drivers convicted of alcohol offenses. (*Effective January 1, 1998.*)  
 46.20.730 Recodified as RCW 46.04.215. (*Effective January 1, 1998.*)  
 46.20.740 Ignition interlocks, biological, technical devices—Notation on driver's license—Penalty. (*Effective January 1, 1998.*)

**46.20.005 Driving without a license—Misdemeanor, when.** Except as expressly exempted by this chapter, it is a misdemeanor for a person to drive any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter. This section does not apply if at the time of the stop the person is not in violation of RCW 46.20.342(1) or 46.20.420 and has in his or her possession an expired driver's license or other valid identifying documentation under RCW 46.20.035. A violation of this section is a lesser included offense within the offenses described in RCW 46.20.342(1) or 46.20.420. [1997 c 66 § 1.]

**46.20.015 Driving without a license—Traffic infraction, when.** Except as expressly exempted by this chapter, it is a traffic infraction and not a misdemeanor under RCW 46.20.005 for a person to drive any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter in his or her possession if the person provides the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop and the person is not in violation of RCW 46.20.342(1) or 46.20.420. A violation of this section is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he or she obtained a valid license after being cited, the court shall reduce the penalty to fifty dollars. [1997 c 66 § 2.]

**46.20.021 "Resident" for driver's license purposes—Surrender of other license—Local license not required.** (1) For the purposes of obtaining a valid driver's license, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(2) The term "Washington public assistance programs" referred to in subsection (1)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and temporary assistance for needy families.

(3) No person shall receive a driver's license unless and until he or she surrenders to the department all valid driver's licenses in his or her possession issued to him or her by any other jurisdiction. The department shall establish a procedure to invalidate the surrendered photograph license and return it to the person. The invalidated license, along with the valid temporary Washington driver's license provided for in RCW 46.20.055(3), shall be accepted as proper identification. The department shall notify the issuing department that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

(4) New Washington residents are allowed thirty days from the date they become residents as defined in this section to procure a valid Washington driver's license.

(5) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations. [1997 c 66 § 3; 1997 c 59 § 8; 1996 c 307 § 5. Prior: 1991 c 293 § 3; 1991 c 73 § 1; 1990 c 250 § 33; 1988 c 88 § 1; 1985 c 302 § 2; 1979 ex.s. c 136 § 53; 1965 ex.s. c 121 § 2.]

**Rules of court:** *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

**Reviser's note:** This section was amended by 1997 c 59 § 8 and by 1997 c 66 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Purpose—Construction—1965 ex.s. c 121:** "With the advent of greatly increased interstate vehicular travel and the migration of motorists between the states, the legislature recognizes the necessity of enacting driver licensing laws which are reasonably uniform with the laws of other states and are at the same time based upon sound, realistic principles, stated in clear explicit language. To achieve these ends the legislature does hereby adopt this 1965 amendatory act relating to driver licensing modeled after the Uniform Vehicle Code subject to such variances as are deemed better suited to the people of this state. It is intended that this 1965 amendatory act be liberally construed to effectuate the purpose of improving the safety of our highways through driver licensing procedures within the framework of the traditional freedoms to which every motorist is entitled." [1965 ex.s. c 121 § 1.]

**46.20.070 Juvenile agricultural driving permits.**

Upon receiving a written application on a form provided by the director for permission for a person under the age of eighteen years to operate a motor vehicle over and upon the public highways of this state in connection with farm work, the director may issue a limited driving permit containing a photograph to be known as a juvenile agricultural driving permit, such issuance to be governed by the following procedure:

(1) The application must be signed by the applicant and by the applicant's father, mother, or legal guardian.

(2) Upon receipt of the application, the director shall cause an examination of the applicant to be made as by law provided for the issuance of a motor vehicle driver's license.

(3) The director shall cause an investigation to be made of the need for the issuance of such operation by the applicant. The permit also authorizes the holder to partici-

pate in the classroom portion of any traffic safety education course authorized under RCW 28A.220.030 that is offered in the community in which the holder is a resident.

Such permit authorizes the holder to operate a motor vehicle over and upon the public highways of this state within a restricted farming locality which shall be described upon the face thereof.

A permit issued under this section shall expire one year from date of issue, except that upon reaching the age of eighteen years such person holding a juvenile agricultural driving permit shall be required to make application for a motor vehicle driver's license.

The director shall charge a fee of three dollars for each such permit and renewal thereof to be paid as by law provided for the payment of motor vehicle driver's licenses and deposited to the credit of the highway safety fund.

The director may transfer this permit from one farming locality to another, but this does not constitute a renewal of the permit.

The director may deny the issuance of a juvenile agricultural driving permit to any person whom the director determines to be incapable of operating a motor vehicle with safety to himself or herself and to persons and property.

The director may suspend, revoke, or cancel the juvenile agricultural driving permit of any person when in the director's sound discretion the director has cause to believe such person has committed any offense for which mandatory suspension or revocation of a motor vehicle driver's license is provided by law.

The director may suspend, cancel, or revoke a juvenile agricultural driving permit when in the director's sound discretion the director is satisfied the restricted character of the permit has been violated. [1997 c 82 § 1; 1985 ex.s. c 1 § 1; 1979 c 61 § 4; 1969 ex.s. c 218 § 9; 1969 ex.s. c 170 § 12; 1967 c 32 § 27; 1963 c 39 § 9; 1961 c 12 § 46.20.070. Prior: 1947 c 158 § 1, part; 1937 c 188 § 45, part; Rem. Supp. 1947 § 6312-45, part.]

**Effective date—1985 ex.s. c 1:** "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, 1985." [1985 ex.s. c 1 § 14.]

#### **46.20.291 Authority to suspend licenses—Grounds.**

The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);

(5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the

terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289;

(6) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.336; or

(7) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320. [1997 c 58 § 806; 1993 c 501 § 4; 1991 c 293 § 5; 1980 c 128 § 12; 1965 ex.s. c 121 § 25.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Effective date—Severability—1980 c 128:** See notes following RCW 46.63.060.

*Reckless driving, suspension of license:* RCW 46.61.500.

*Vehicular assault*

*drug and alcohol evaluation and treatment:* RCW 46.61.524.

*penalty:* RCW 46.61.522.

*Vehicular homicide*

*drug and alcohol evaluation and treatment:* RCW 46.61.524.

*penalty:* RCW 46.61.520.

#### **46.20.311 Duration of license sanctions—Reissuance or renewal.**

(1) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.342 or other provision of law. Except for a suspension under RCW 46.20.289, 46.20.291(5), or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order. The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege

renewed or restored until: (a) After the expiration of one year from the date the license or privilege to drive was revoked; (b) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (c) after the expiration of two years for persons convicted of vehicular homicide; or (d) after the expiration of the applicable revocation period provided by RCW 46.20.265. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be fifty dollars. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be fifty dollars. [1997 c 58 § 807; 1995 c 332 § 11; 1994 c 275 § 27; 1993 c 501 § 5; 1990 c 250 § 45; 1988 c 148 § 9. Prior: 1985 c 407 § 4; 1985 c 211 § 1; 1984 c 258 § 325; 1983 c 165 § 18; 1983 c 165 § 17; 1982 c 212 § 5; 1981 c 91 § 1; 1979 ex.s. c 136 § 60; 1973 1st ex.s. c 36 § 1; 1969 c 1 § 2 (Initiative Measure No. 242, approved November 5, 1968); 1967 c 167 § 5; 1965 ex.s. c 121 § 27.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Legislative finding—Severability—1988 c 148:** See notes following RCW 13.40.265.

**Effective dates—1985 c 407:** See note following RCW 46.04.480.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.46.120.

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability, implied consent law—1969 c 1:** See RCW 46.20.911.

#### **46.20.500 Motorcycle endorsement—Exceptions.**

No person may drive a motorcycle or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles, nor may a person drive a motorcycle of a larger engine displacement than that authorized by such special endorsement or by an instruction permit for such category. However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped. No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle. [1997 c 328 § 3; 1982 c 77 § 1; 1979 ex.s. c 213 § 6; 1967 c 232 § 1.]

**Rules of court: Monetary penalty schedule—JTIR 6.2.**

**Severability—1982 c 77:** "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." [1982 c 77 § 10.]

#### **Mopeds**

**operation and safety standards:** RCW 46.61.710, 46.61.720.

**registration:** RCW 46.16.630.

**46.20.720 Ignition interlocks, biological, technical devices—Drivers convicted of alcohol offenses. (Effective January 1, 1998.)** The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device.

The court shall establish a specific calibration setting at which the ignition interlock or other biological or technical device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction.

For purposes of this section, "convicted" means being found guilty of an offense or being placed on a deferred prosecution program under chapter 10.05 RCW. [1997 c 229 § 8; 1994 c 275 § 22; 1987 c 247 § 2.]

**Effective date—1997 c 229:** See note following RCW 10.05.090.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**46.20.730 Recodified as RCW 46.04.215. (Effective January 1, 1998.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**46.20.740 Ignition interlocks, biological, technical devices—Notation on driver's license—Penalty.** (*Effective January 1, 1998.*) (1) The department shall attach or imprint a notation on the driver's license of any person restricted under RCW 46.20.720 stating that the person may operate only a motor vehicle equipped with an ignition interlock or other biological or technical device.

(2) It is a misdemeanor for a person with such a notation on his or her driver's license to operate a motor vehicle that is not so equipped. [1997 c 229 § 10; 1994 c 275 § 24; 1987 c 247 § 4.]

**Effective date—1997 c 229:** See note following RCW 10.05.090.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

## Chapter 46.37

### VEHICLE LIGHTING AND OTHER EQUIPMENT

#### Sections

- 46.37.010 Scope and effect of regulations—General penalty.
- 46.37.193 Signs on buses.
- 46.37.530 Motorcycles, motor-driven cycles, mopeds, electric-assisted bicycles—Helmets, other equipment—Children—Rules.

**46.37.010 Scope and effect of regulations—General penalty.** (1) It is a traffic infraction for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol's regulations, or for any person to do any act forbidden or fail to perform any act required under this chapter or the state patrol's regulations.

(2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(3) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(5) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(7) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

(8) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(9) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(10) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee. [1997 c 241 § 14; 1989 c 178 § 22; 1987 c 330 § 707; 1979 ex.s. c 136 § 69; 1977 ex.s. c 355 § 1; 1963 c 154 § 1; 1961 c 12 § 46.37.010. Prior: 1955 c 269 § 1; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

**Rules of court: Monetary penalty schedule—JTIR 6.2.**

**Severability—Effective dates—1989 c 178:** See RCW 46.25.900 and 46.25.901

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability—1977 ex.s. c 355:** "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 355 § 57.]

**Effective date—1963 c 154:** "This act shall take effect on January 1, 1964." [1963 c 154 § 32.]

**Moving defective vehicle: RCW 46.32.060.**

**46.37.193 Signs on buses.** Every school bus and private carrier bus, in addition to any other equipment or distinctive markings required by this chapter, shall bear upon the front and rear thereof, above the windows thereof, plainly visible signs containing only the words "school bus" on a school bus and only the words "private carrier bus" on a private carrier bus in letters not less than eight inches in height, and in addition shall be equipped with visual signals meeting the requirements of RCW 46.37.190. School districts may affix signs designed according to RCW 46.61.380 informing motorists of the monetary penalty for failure to stop for a school bus when the visual signals are activated.

However, a private carrier bus that regularly transports children to and from a private school or in connection with school activities may display the words "school bus" in a

manner provided in this section and need not comply with the requirements set forth in the most recent edition of "Specifications for School Buses" published by the superintendent of public instruction. [1997 c 80 § 3; 1995 c 141 § 2; 1990 c 241 § 10.]

**46.37.530 Motorcycles, motor-driven cycles, mopeds, electric-assisted bicycles—Helmets, other equipment—Children—Rules.** (1) It is unlawful:

(a) For any person to operate a motorcycle or motor-driven cycle not equipped with mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least two hundred feet to the rear of the motorcycle or motor-driven cycle: PROVIDED, That mirrors shall not be required on any motorcycle or motor-driven cycle over twenty-five years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show, or other such assemblage: PROVIDED FURTHER, That no mirror is required on any motorcycle manufactured prior to January 1, 1931;

(b) For any person to operate a motorcycle or motor-driven cycle which does not have a windshield unless wearing glasses, goggles, or a face shield of a type conforming to rules adopted by the state patrol;

(c) For any person to operate or ride upon a motorcycle, motor-driven cycle, or moped on a state highway, county road, or city street unless wearing upon his or her head a protective helmet of a type conforming to rules adopted by the state patrol except when the vehicle is an antique motor-driven cycle or automobile that is licensed as a motorcycle or when the vehicle is equipped with seat belts and roll bars approved by the state patrol. The helmet must be equipped with either a neck or chin strap which shall be fastened securely while the motorcycle or motor-driven cycle is in motion. Persons operating electric-assisted bicycles shall comply with all laws and regulations related to the use of bicycle helmets;

(d) For any person to transport a child under the age of five on a motorcycle or motor-driven cycle;

(e) For any person to sell or offer for sale a motorcycle helmet which does not meet the requirements established by the state patrol.

(2) The state patrol is hereby authorized and empowered to adopt and amend rules, pursuant to the Administrative Procedure Act, concerning the standards and procedures for conformance of rules adopted for glasses, goggles, face shields, and protective helmets. [1997 c 328 § 4; 1990 c 270 § 7. Prior: 1987 c 454 § 1; 1987 c 330 § 732; 1986 c 113 § 8; 1982 c 77 § 7; 1977 ex.s. c 355 § 55; 1971 ex.s. c 150 § 1; 1969 c 42 § 1; 1967 c 232 § 4.]

*Rules of court: Monetary penalty schedule—JTIR 6.2.*

**Short title—1990 c 270:** See RCW 43.70.440.

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1982 c 77:** See note following RCW 46.20.500.

**Severability—1977 ex.s. c 355:** See note following RCW 46.37.010.

*Maximum height for handlebars: RCW 46.61.611.*

*Riding on motorcycles: RCW 46.61.610.*

**Chapter 46.44**  
**SIZE, WEIGHT, LOAD**

Sections

46.44.010 Outside width limit.

46.44.034 Maximum lengths—Front and rear protrusions.

46.44.041 Maximum gross weights—Wheelbase and axle factors.

**46.44.010 Outside width limit.** The total outside width of any vehicle or load thereon shall not exceed eight and one-half feet: PROVIDED, That no rear vision mirror may extend more than five inches beyond the extreme limits of the body: PROVIDED FURTHER, That excluded from this calculation of width are safety appliances such as clearance lights, rub rails, flexible fender extensions, mud flaps, and splash and spray suppressant devices, and appurtenances such as door handles, door hinges, and turning signal brackets and such other safety appliances and appurtenances as the department may determine are necessary for the safe and efficient operation of motor vehicles: AND PROVIDED FURTHER, That no appliances or appurtenances may extend more than three inches beyond the extreme limits of the body. [1997 c 63 § 1; 1983 c 278 § 1; 1961 c 12 § 46.44.010. Prior: 1947 c 200 § 4; 1937 c 189 § 47; Rem. Supp. 1947 § 6360-47; 1923 c 181 § 4, part; RRS § 6362-8, part.]

**46.44.034 Maximum lengths—Front and rear protrusions.** (1) The load, or any portion of any vehicle, operated alone upon the public highway of this state, or the load, or any portion of the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle, or the front bumper, if equipped with front bumper. This subsection does not apply to a front-loading garbage truck or recycling truck while on route and actually engaged in the collection of solid waste or recyclables at speeds of twenty miles per hour or less.

(2) No vehicle shall be operated upon the public highways with any part of the permanent structure or load extending in excess of fifteen feet beyond the center of the last axle of such vehicle. This subsection does not apply to "specialized equipment" designated under 49 U.S.C. Sec. 2311 that is operated on the interstate highway system, those designated portions of the federal-aid primary system, and routes constituting reasonable access from such highways to terminals and facilities for food, fuel, repairs, and rest. [1997 c 191 § 1; 1991 c 143 § 1; 1961 c 12 § 46.44.034. Prior: 1957 c 273 § 15; 1951 c 269 § 24; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

**46.44.041 Maximum gross weights—Wheelbase and axle factors.** No vehicle or combination of vehicles shall operate upon the public highways of this state with a gross load on any single axle in excess of twenty thousand pounds, or upon any group of axles in excess of that set forth in the following table, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each, if the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more.

| Dis-<br>tance<br>in feet<br>between<br>the ex-<br>tremes<br>of any<br>group<br>of 2<br>or more<br>consecu-<br>tive<br>axles | Maximum load in pounds<br>carried on any group of 2<br>or more consecutive axles |            |            |            |            |            |            |            |  |
|---|--|------------|------------|------------|------------|------------|------------|------------|--|
|   | 2<br>axles   | 3<br>axles | 4<br>axles | 5<br>axles | 6<br>axles | 7<br>axles | 8<br>axles | 9<br>axles |  |
| 4   | 34,000   |            |            |            |            |            |            |            |  |
| 5   | 34,000   |            |            |            |            |            |            |            |  |
| 6   | 34,000   |            |            |            |            |            |            |            |  |
| 7   | 34,000   |            |            |            |            |            |            |            |  |
| 8 & less  | 34,000   | 34,000     |            |            |            |            |            |            |  |
| more than 8   | 38,000   | 42,000     |            |            |            |            |            |            |  |
| 9   | 39,000   | 42,500     |            |            |            |            |            |            |  |
| 10  | 40,000   | 43,500     |            |            |            |            |            |            |  |
| 11  |  | 44,000     |            |            |            |            |            |            |  |
| 12  |  | 45,000     | 50,000     |            |            |            |            |            |  |
| 13  |  | 45,500     | 50,500     |            |            |            |            |            |  |
| 14  |  | 46,500     | 51,500     |            |            |            |            |            |  |
| 15  |  | 47,000     | 52,000     |            |            |            |            |            |  |
| 16  |  | 48,000     | 52,500     | 58,000     |            |            |            |            |  |
| 17  |  | 48,500     | 53,500     | 58,500     |            |            |            |            |  |
| 18  |  | 49,500     | 54,000     | 59,000     |            |            |            |            |  |
| 19  |  | 50,000     | 54,500     | 60,000     |            |            |            |            |  |
| 20  |  | 51,000     | 55,500     | 60,500     | 66,000     |            |            |            |  |
| 21  |  | 51,500     | 56,000     | 61,000     | 66,500     |            |            |            |  |
| 22  |  | 52,500     | 56,500     | 61,500     | 67,000     |            |            |            |  |
| 23  |  | 53,000     | 57,500     | 62,500     | 68,000     |            |            |            |  |
| 24  |  | 54,000     | 58,000     | 63,000     | 68,500     | 74,000     |            |            |  |
| 25  |  | 54,500     | 58,500     | 63,500     | 69,000     | 74,500     |            |            |  |
| 26  |  | 55,500     | 59,500     | 64,000     | 69,500     | 75,000     |            |            |  |
| 27  |  | 56,000     | 60,000     | 65,000     | 70,000     | 75,500     |            |            |  |
| 28  |  | 57,000     | 60,500     | 65,500     | 71,000     | 76,500     | 82,000     |            |  |
| 29  |  | 57,500     | 61,500     | 66,000     | 71,500     | 77,000     | 82,500     |            |  |
| 30  |  | 58,500     | 62,000     | 66,500     | 72,000     | 77,500     | 83,000     |            |  |
| 31  |  | 59,000     | 62,500     | 67,500     | 72,500     | 78,000     | 83,500     |            |  |
| 32  |  | 60,000     | 63,500     | 68,000     | 73,000     | 78,500     | 84,500     | 90,000     |  |
| 33  |  |            | 64,000     | 68,500     | 74,000     | 79,000     | 85,000     | 90,500     |  |
| 34  |  |            | 64,500     | 69,000     | 74,500     | 80,000     | 85,500     | 91,000     |  |
| 35  |  |            | 65,500     | 70,000     | 75,000     | 80,500     | 86,000     | 91,500     |  |
| 36  |  |            | 66,000     | 70,500     | 75,500     | 81,000     | 86,500     | 92,000     |  |
| 37  |  |            | 66,500     | 71,000     | 76,000     | 81,500     | 87,000     | 93,000     |  |
| 38  |  |            | 67,500     | 71,500     | 77,000     | 82,000     | 87,500     | 93,500     |  |
| 39  |  |            | 68,000     | 72,500     | 77,500     | 82,500     | 88,500     | 94,000     |  |
| 40  |  |            | 68,500     | 73,000     | 78,000     | 83,500     | 89,000     | 94,500     |  |
| 41  |  |            | 69,500     | 73,500     | 78,500     | 84,000     | 89,500     | 95,000     |  |
| 42  |  |            | 70,000     | 74,000     | 79,000     | 84,500     | 90,000     | 95,500     |  |
| 43  |  |            | 70,500     | 75,000     | 80,000     | 85,000     | 90,500     | 96,000     |  |
| 44  |  |            | 71,500     | 75,500     | 80,500     | 85,500     | 91,000     | 96,500     |  |
| 45  |  |            | 72,000     | 76,000     | 81,000     | 86,000     | 91,500     | 97,500     |  |
| 46  |  |            | 72,500     | 76,500     | 81,500     | 87,000     | 92,500     | 98,000     |  |
| 47  |  |            | 73,500     | 77,500     | 82,000     | 87,500     | 93,000     | 98,500     |  |
| 48  |  |            | 74,000     | 78,000     | 83,000     | 88,000     | 93,500     | 99,000     |  |
| 49  |  |            | 74,500     | 78,500     | 83,500     | 88,500     | 94,000     | 99,500     |  |
| 50  |  |            | 75,500     | 79,000     | 84,000     | 89,000     | 94,500     | 100,000    |  |
| 51  |  |            | 76,000     | 80,000     | 84,500     | 89,500     | 95,000     | 100,500    |  |
| 52  |  |            | 76,500     | 80,500     | 85,000     | 90,500     | 95,500     | 101,000    |  |
| 53  |  |            | 77,500     | 81,000     | 86,000     | 91,000     | 96,500     | 102,000    |  |
| 54  |  |            | 78,000     | 81,500     | 86,500     | 91,500     | 97,000     | 102,500    |  |
| 55  |  |            | 78,500     | 82,500     | 87,000     | 92,000     | 97,500     | 103,000    |  |
| 56  |  |            | 79,500     | 83,000     | 87,500     | 92,500     | 98,000     | 103,500    |  |
| 57  |  |            | 80,000     | 83,500     | 88,000     | 93,000     | 98,500     | 104,000    |  |
| 58  |  |            |            | 84,000     | 89,000     | 94,000     | 99,000     | 104,500    |  |
| 59  |  |            |            | 85,000     | 89,500     | 94,500     | 99,500     | 105,500    |  |
| 60  |  |            |            | 85,500     | 90,000     | 95,000     | 100,500    | 105,500    |  |
| 61  |  |            |            | 86,000     | 90,500     | 95,500     | 101,000    | 105,500    |  |
| 62  |  |            |            | 86,500     | 91,000     | 96,000     | 101,500    | 105,500    |  |
| 63  |  |            |            | 87,500     | 92,000     | 96,500     | 102,000    | 105,500    |  |
| 64  |  |            |            | 88,000     | 92,500     | 97,500     | 102,500    | 105,500    |  |
| 65  |  |            |            | 88,500     | 93,000     | 98,000     | 103,000    | 105,500    |  |
| 66  |  |            |            | 89,000     | 93,500     | 98,500     | 103,500    | 105,500    |  |
| 67  |  |            |            | 90,000     | 94,000     | 99,000     | 104,500    | 105,500    |  |
| 68  |  |            |            | 90,500     | 95,000     | 99,500     | 105,000    | 105,500    |  |
| 69  |  |            |            | 91,000     | 95,500     | 100,000    | 105,500    | 105,500    |  |
| 70  |  |            |            | 91,500     | 96,000     | 101,000    | 105,500    | 105,500    |  |
| 71  |  |            |            | 92,500     | 96,500     | 101,500    | 105,500    | 105,500    |  |

|            |         |         |         |         |         |
|------------|---------|---------|---------|---------|---------|
| 72         | 93,000  | 97,000  | 102,000 | 105,500 | 105,500 |
| 73         | 93,500  | 98,000  | 102,500 | 105,500 | 105,500 |
| 74         | 94,000  | 98,500  | 103,000 | 105,500 | 105,500 |
| 75         | 95,000  | 99,000  | 103,500 | 105,500 | 105,500 |
| 76         | 95,500  | 99,500  | 104,500 | 105,500 | 105,500 |
| 77         | 96,000  | 100,000 | 105,000 | 105,500 | 105,500 |
| 78         | 96,500  | 101,000 | 105,500 | 105,500 | 105,500 |
| 79         | 97,500  | 101,500 | 105,500 | 105,500 | 105,500 |
| 80         | 98,000  | 102,000 | 105,500 | 105,500 | 105,500 |
| 81         | 98,500  | 102,500 | 105,500 | 105,500 | 105,500 |
| 82         | 99,000  | 103,000 | 105,500 | 105,500 | 105,500 |
| 83         | 100,000 | 104,000 | 105,500 | 105,500 | 105,500 |
| 84         |         | 104,500 | 105,500 | 105,500 | 105,500 |
| 85         |         | 105,000 | 105,500 | 105,500 | 105,500 |
| 86 or more |         | 105,500 | 105,500 | 105,500 | 105,500 |

When inches are involved: Under six inches take lower, six inches or over take higher. The maximum load on any axle in any group of axles shall not exceed the single axle or tandem axle allowance as set forth in the table above.

The maximum axle and gross weights specified in this section are subject to the braking requirements set up for the service brakes upon any motor vehicle or combination of vehicles as provided by law.

Loads of not more than eighty thousand pounds which may be legally hauled in the state bordering this state which also has a sales tax, are legal in this state when moving to a port district within four miles of the bordering state except on the interstate system. This provision does not allow the operation of a vehicle combination consisting of a truck tractor and three trailers.

Notwithstanding anything contained herein, a vehicle or combination of vehicles in operation on January 4, 1975, may operate upon the public highways of this state, including the interstate system within the meaning of section 127 of Title 23, United States Code, with an overall gross weight upon a group of two consecutive sets of dual axles which was lawful in this state under the laws, regulations, and procedures in effect in this state on January 4, 1975. [1997 c 198 § 1; 1995 c 171 § 1. Prior: 1993 c 246 § 1; 1993 c 102 § 3; prior: 1988 c 229 § 1; 1988 c 6 § 2; 1985 c 351 § 3; 1977 c 81 § 2; 1975-'76 2nd ex.s. c 64 § 22.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

### Chapter 46.52 ACCIDENTS—REPORTS—ABANDONED VEHICLES

| Sections  |   |
|-----------|---|
| 46.52.030 | Accident reports.                               |
| 46.52.130 | Abstract of driving record—Access—Fees—Penalty. |

**46.52.030 Accident reports.** (1) Unless a report is to be made by a law enforcement officer under subsection (3) of this section, the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with subsection (5) of this section, shall, within four days after such accident, make a written report of such accident to the chief of police of the city or town if such accident occurred within an incorporated city or town



or the county sheriff or state patrol if such accident occurred outside incorporated cities and towns. Nothing in this subsection prohibits accident reports from being filed by drivers where damage to property is less than the minimum amount or where a law enforcement officer has submitted a report.

(2) The original of the report shall be immediately forwarded by the authority receiving the report to the chief of the Washington state patrol at Olympia, Washington. The Washington state patrol shall give the department of licensing full access to the report.

(3) Any law enforcement officer who investigates an accident for which a report is required under subsection (1) of this section shall submit an investigator's report as required by RCW 46.52.070.

(4) The chief of the Washington state patrol may require any driver of any vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report in the chief's opinion is insufficient, and may likewise require witnesses of any such accident to render reports. For this purpose, the chief of the Washington state patrol shall prepare and, upon request, supply to any police department, coroner, sheriff, and any other suitable agency or individual, sample forms of accident reports required hereunder, which reports shall be upon a form devised by the chief of the Washington state patrol and shall call for sufficiently detailed information to disclose all material facts with reference to the accident to be reported thereon, including the location, the circumstances, the conditions then existing, the persons and vehicles involved, the insurance information required under RCW 46.30.030, personal injury or death, if any, the amounts of property damage claimed, the total number of vehicles involved, whether the vehicles were legally parked, legally standing, or moving, and whether such vehicles were occupied at the time of the accident. Every required accident report shall be made on a form prescribed by the chief of the Washington state patrol and each authority charged with the duty of receiving such reports shall provide sufficient report forms in compliance with the form devised. The report forms shall be designated so as to provide that a copy may be retained by the reporting person.

(5) The chief of the Washington state patrol shall adopt rules establishing the accident-reporting threshold for property damage accidents. Beginning October 1, 1987, the accident-reporting threshold for property damage accidents shall be five hundred dollars. The accident-reporting threshold for property damage accidents shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision. [1997 c 248 § 1; 1996 c 183 § 1; 1989 c 353 § 5; 1987 c 463 § 2; 1981 c 30 § 1; 1979 c 158 § 160; 1979 c 11 § 2. Prior: 1977 ex.s. c 369 § 2; 1977 ex.s. c 68 § 1; 1969 ex.s. c 40 § 2; 1967 c 32 § 54; 1965 ex.s. c 119 § 1; 1961 c 12 § 46.52.030; prior: 1943 c 154 § 1; 1937 c 189 § 135; RRS § 6360-135.]

**Effective date—1997 c 248:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and takes effect immediately [May 2, 1997]." [1997 c 248 § 2.]

**Effective date—1996 c 183:** "This act takes effect July 1, 1996." [1996 c 183 § 3.]

**Severability—Effective date—1989 c 353:** See RCW 46.30.900 and 46.30.901.

**46.52.130 Abstract of driving record—Access—Fees—Penalty.** A certified abstract of the driving record shall be furnished only to the individual named in the abstract, an employer or prospective employer or an agent acting on behalf of an employer or prospective employer, the insurance carrier that has insurance in effect covering the employer or a prospective employer, the insurance carrier that has insurance in effect covering the named individual, the insurance carrier to which the named individual has applied, an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment, or city and county prosecuting attorneys. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies. Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years. Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract or to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer. Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).

The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state



patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

Release of a certified abstract of the driving record of an employee or prospective employee requires a statement signed by: (1) The employee or prospective employee that authorizes the release of the record, and (2) the employer attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus upon the public highways of this state. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

Any violation of this section is a gross misdemeanor. [1997 c 66 § 12. Prior: 1996 c 307 § 4; 1996 c 183 § 2; 1994 c 275 § 16; 1991 c 243 § 1; 1989 c 178 § 24; prior: 1987 1st ex.s. c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

*Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

**Effective date—1996 c 183:** See note following RCW 46.52.030.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Severability—Effective dates—1989 c 178:** See RCW 46.25.900 and 46.25.901.

**Severability—Effective date—1987 1st ex.s. c 9:** See notes following RCW 46.29.050.

**Intent—1987 c 397:** See note following RCW 46.61.410.

**Effective date—1985 ex.s. c 1:** See note following RCW 46.20.070.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Effective date—1967 c 174:** See note following RCW 46.29.050.

*Abstract of driving record to be furnished: RCW 46.29.050.*

*Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.*

## Chapter 46.55

### TOWING AND IMPOUNDMENT

(Formerly: Abandoned, unauthorized, and junk vehicles—Tow truck operators)

#### Sections

46.55.113 Removal by police officer.

**46.55.113 Removal by police officer.** Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504, the arresting officer may take custody of the vehicle and provide for its prompt removal to a place of safety. In addition, a police officer may take custody of a vehicle and provide for its prompt removal to a place of safety under any of the following circumstances:

(1) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(2) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(3) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(4) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(5) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(6) Whenever a vehicle without a special license plate, card, or decal indicating that the vehicle is being used to transport a disabled person under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(7) Upon determining that a person is operating a motor vehicle without a valid driver's license in violation of RCW 46.20.005 or with a license that has been expired for ninety days or more, or with a suspended or revoked license in violation of RCW 46.20.342 or 46.20.420.

Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator. [1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.61.565.]

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

## Chapter 46.61 RULES OF THE ROAD

### Sections

|            |  |
|------------|--|
| 46.61.005  | Chapter refers to vehicles upon highways—Exceptions.   |
| 46.61.100  | Keep right except when passing, etc.   |
| 46.61.290  | Required position and method of turning at intersections.  |
| 46.61.370  | Overtaking or meeting school bus—Duties of bus driver.   |
| 46.61.440  | Maximum speed limit when passing school or playground crosswalks—Penalty, disposition of proceeds. |
| 46.61.5055 | Alcohol violators—Penalty schedule. ( <i>Effective until January 1, 1998.</i> )                    |
| 46.61.5055 | Alcohol violators—Penalty schedule. ( <i>Effective January 1, 1998.</i> )                          |
| 46.61.5249 | Negligent driving—First degree.  |
| 46.61.525  | Negligent driving—Second degree.   |
| 46.61.660  | Carrying persons or animals on outside part of vehicle.  |
| 46.61.710  | Mopeds, electric-assisted bicycles—General requirements and operation.                             |

**46.61.005 Chapter refers to vehicles upon highways—Exceptions.** The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section.

(2) The provisions of RCW 46.52.010 through 46.52.090, 46.61.500 through 46.61.525, and 46.61.5249 shall apply upon highways and elsewhere throughout the state. [1997 c 66 § 13; 1990 c 291 § 4; 1965 ex.s. c 155 § 1.]

**46.61.100 Keep right except when passing, etc.** (1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes and providing for two-way movement traffic under the rules applicable thereon; or

(d) Upon a street or highway restricted to one-way traffic.

(2) Upon all roadways having two or more lanes for traffic moving in the same direction, all vehicles shall be driven in the right-hand lane then available for traffic, except (a) when overtaking and passing another vehicle proceeding in the same direction, (b) when traveling at a speed greater

than the traffic flow, (c) when moving left to allow traffic to merge, or (d) when preparing for a left turn at an intersection, exit, or into a private road or driveway when such left turn is legally permitted. On any such roadway, a vehicle or combination over ten thousand pounds shall be driven only in the right-hand lane except under the conditions enumerated in (a) through (d) of this subsection.

(3) No vehicle towing a trailer or no vehicle or combination over ten thousand pounds may be driven in the left-hand lane of a limited access roadway having three or more lanes for traffic moving in one direction except when preparing for a left turn at an intersection, exit, or into a private road or driveway when a left turn is legally permitted. This subsection does not apply to a vehicle using a high-occupancy vehicle lane. A high-occupancy vehicle lane is not considered the left-hand lane of a roadway. The department of transportation, in consultation with the Washington state patrol, shall adopt rules specifying (a) those circumstances where it is permissible for other vehicles to use the left lane in case of emergency or to facilitate the orderly flow of traffic, and (b) those segments of limited access roadway to be exempt from this subsection due to the operational characteristics of the roadway.

(4) It is a traffic infraction to drive continuously in the left lane of a multilane roadway when it impedes the flow of other traffic.

(5) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, a vehicle shall not be driven to the left of the center line of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (1)(b) of this section. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway. [1997 c 253 § 1; 1986 c 93 § 2; 1972 ex.s. c 33 § 1; 1969 ex.s. c 281 § 46; 1967 ex.s. c 145 § 58; 1965 ex.s. c 155 § 15.]

*Rules of court: Monetary penalty schedule—JTIR 6.2.*

**Legislative intent—1986 c 93:** "It is the intent of the legislature, in this 1985 [1986] amendment of RCW 46.61.100, that the left-hand lane on any state highway with two or more lanes in the same direction be used primarily as a passing lane." [1986 c 93 § 1.]

*Information on proper use of left-hand lane: RCW 28A.220.050, 46.20.095, 46.82.430, 47.36.260.*

**46.61.290 Required position and method of turning at intersections.** The driver of a vehicle intending to turn shall do so as follows:

(1) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as the vehicle on the roadway being entered.

(3) Two-way left turn lanes.

(a) The department of transportation and local authorities in their respective jurisdictions may designate a two-way left turn lane on a roadway. A two-way left turn lane is near the center of the roadway set aside for use by vehicles making left turns in either direction from or into the roadway.

(b) Two-way left turn lanes shall be designated by distinctive uniform roadway markings. The department of transportation shall determine and prescribe standards and specifications governing type, length, width, and positioning of the distinctive permanent markings. The standards and specifications developed shall be filed with the code reviser in accordance with the procedures set forth in the administrative procedure act, chapter 34.05 RCW. On and after July 1, 1971, permanent markings designating a two-way left turn lane shall conform to such standards and specifications.

(c) Upon a roadway where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from either direction, no vehicles may turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. No vehicle may travel further than three hundred feet within the lane. A signal, either electric or manual, for indicating a left turn movement, shall be made at least one hundred feet before the actual left turn movement is made.

(4) The department of transportation and local authorities in their respective jurisdictions may cause official traffic-control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles, and when the devices are so placed no driver of a vehicle may turn a vehicle other than as directed and required by the devices. [1997 c 202 § 1. Prior: 1984 c 12 § 1; 1984 c 7 § 68; 1975 c 62 § 28; 1969 ex.s. c 281 § 61; 1965 ex.s. c 155 § 40.]

*Rules of court: Monetary penalty schedule—JTIR 6.2.*

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

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

**46.61.370 Overtaking or meeting school bus—Duties of bus driver.** (1) The driver of a vehicle upon overtaking or meeting from either direction any school bus which has stopped on the roadway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such school bus resumes motion or the visual signals are no longer activated.

(2) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150 need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(3) The driver of a vehicle upon a highway with three or more marked traffic lanes need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(4) The driver of a school bus shall actuate the visual signals required by RCW 46.37.190 only when such bus is

stopped on the roadway for the purpose of receiving or discharging school children.

(5) The driver of a school bus may stop completely off the roadway for the purpose of receiving or discharging school children only when the school children do not have to cross the roadway. The school bus driver shall actuate the hazard warning lamps as defined in RCW 46.37.215 before loading or unloading school children at such stops.

(6) A person found to have committed an infraction of subsection (1) of this section shall be assessed a monetary penalty equal to twice the total penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended. Fifty percent of the money so collected shall be deposited into the school zone safety account in the custody of the state treasurer and disbursed in accordance with RCW 46.61.440(3). [1997 c 80 § 1; 1990 c 241 § 8; 1965 ex.s. c 155 § 52.]

*Rules of court: Monetary penalty schedule—JTIR 6.2.*

*Bus routes: RCW 28A.160.115.*

**46.61.440 Maximum speed limit when passing school or playground crosswalks—Penalty, disposition of proceeds.** (1) Subject to RCW 46.61.400(1), and except in those instances where a lower maximum lawful speed is provided by this chapter or otherwise, it shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour when operating any vehicle upon a highway either inside or outside an incorporated city or town when passing any marked school or playground crosswalk when such marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs. The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk.

(2) A person found to have committed any infraction relating to speed restrictions within a school or playground speed zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

(3) The school zone safety account is created in the custody of the state treasurer. Fifty percent of the moneys collected under subsection (2) of this section shall be deposited into the account. Expenditures from the account may be used only by the Washington traffic safety commission solely to fund projects in local communities to improve school zone safety, pupil transportation safety, and student safety in school bus loading and unloading areas. Only the director of the traffic safety commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures until July 1, 1999, after which date moneys in the account may be spent only after appropriation. [1997 c 80 § 2; 1996 c 114 § 1; 1975 c 62 § 34; 1963 c 16 § 5; 1961 c 12 § 46.48.023. Prior: 1951 c 28 § 9; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360-64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362-3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.023.]

**Effective date—1996 c 114:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 1996]." [1996 c 114 § 2.]

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

**46.61.5055 Alcohol violators—Penalty schedule.** (*Effective until January 1, 1998.*) (1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one hundred twenty days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the

department shall suspend the offender's license, permit, or privilege.

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year. Thirty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one year. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year. Forty-five days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of four hundred fifty days. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the

person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year. Ninety days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of two years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year. One hundred twenty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of three years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(4) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property.

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

(6) After expiration of any period of suspension or revocation of the offender's license, permit, or privilege to drive required by this section, the department shall place the

offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(8)(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense. [1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

**Effective date—1995 1st sp.s. c 17:** See note following RCW 46.20.355.

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**46.61.5055 Alcohol violators—Penalty schedule.** (*Effective January 1, 1998.*) (1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of one year. The period of license, permit, or privilege suspension may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall suspend the offender's license, permit, or privilege.

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year. Thirty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of two years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year. Forty-five days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of nine hundred days. The period of license, permit, or privilege revocation may not be suspended. The

court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within five years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year. Ninety days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of three years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year. One hundred twenty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; and

(iii) By revocation of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of four years. The period of license, permit, or privilege revocation may not be suspended. The court shall notify the department of licensing of the conviction, and upon receiving notification of the conviction the department shall revoke the offender's license, permit, or privilege.

(4) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider whether the person's driving at the time of the

offense was responsible for injury or damage to another or another's property.

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

(6) After expiration of any period of suspension or revocation of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(8)(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249 or an equivalent local ordinance, if the conviction is the result



of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense. [1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

**Reviser's note:** This section was amended by 1997 c 66 § 14 and by 1997 c 229 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 229:** See note following RCW 10.05.090.

**Effective date—1995 1st sp.s. c 17:** See note following RCW 46.20.355.

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**46.61.5249 Negligent driving—First degree.** (1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug.

(b) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an illegal drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.

(c) Negligent driving in the first degree is a misdemeanor.

(2) For the purposes of this section:

(a) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(b) "Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(i) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(ii) Is shown by other evidence to have recently consumed liquor.

(c) "Exhibiting the effects of having consumed an illegal drug" means that a person by speech, manner, appearance,

behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug and either:

(i) Is in possession of an illegal drug; or

(ii) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section. [1997 c 66 § 4.]

**46.61.525 Negligent driving—Second degree.** (1)(a)

A person is guilty of negligent driving in the second degree if, under circumstances not constituting negligent driving in the first degree, he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.

(b) It is an affirmative defense to negligent driving in the second degree that must be proved by the defendant by a preponderance of the evidence, that the driver was operating the motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent.

(c) Negligent driving in the second degree is a traffic infraction and is subject to a penalty of two hundred fifty dollars.

(2) For the purposes of this section, "negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section. [1997 c 66 § 5; 1996 c 307 § 1; 1979 ex.s. c 136 § 86; 1967 c 32 § 69; 1961 c 12 § 46.56.030. Prior: 1939 c 154 § 1; RRS § 6360-118 1/2. Formerly RCW 46.56.030.]

**Rules of court:** *Negligent driving cases—CrRLJ 3.2.*

**Report by administrator for courts:** "(1) The office of the administrator for the courts shall collect data on the following after June 6, 1996:

(a) The number of arrests, charges, and convictions for negligent driving in the first degree;

(b) The number of notices of infraction issued for negligent driving in the second degree; and

(c) The number of charges for negligent driving that were the result of an amended charge from some other offense, and the numbers for each such other offense.

(2) The office of the administrator for the courts shall compile the collected data and make a report to the legislature no later than October 1, 1998." [1996 c 307 § 2.]

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.



*Arrest of person involved in negligent driving: RCW 10.31.100.*

*Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 88.12.025.*

**46.61.660 Carrying persons or animals on outside part of vehicle.** It shall be unlawful for any person to transport any living animal on the running board, fenders, hood, or other outside part of any vehicle unless suitable harness, cage or enclosure be provided and so attached as to protect such animal from falling or being thrown therefrom. It shall be unlawful for any person to transport any persons upon the running board, fenders, hood or other outside part of any vehicle, except that this provision shall not apply to authorized emergency vehicles or to solid waste collection vehicles that are engaged in collecting solid waste or recyclables on route at speeds of twenty miles per hour or less. [1997 c 190 § 1; 1961 c 12 § 46.56.070. Prior: 1937 c 189 § 115; RRS § 6360-115. Formerly RCW 46.56.070.]

**46.61.710 Mopeds, electric-assisted bicycles—General requirements and operation.** (1) No person shall operate a moped upon the highways of this state unless the moped has been assigned a moped registration number and displays a moped permit in accordance with the provisions of RCW 46.16.630.

(2) Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

(3) Operation of a moped or an electric-assisted bicycle on a fully controlled limited access highway or on a sidewalk is unlawful.

(4) Removal of any muffling device or pollution control device from a moped is unlawful.

(5) Subsections (1), (2), and (4) of this section do not apply to electric-assisted bicycles. Electric-assisted bicycles may have access to highways of the state to the same extent as bicycles. Electric-assisted bicycles may be operated on a multipurpose trail or bicycle lane, but local jurisdictions may restrict or otherwise limit the access of electric-assisted bicycles. [1997 c 328 § 5; 1979 ex.s. c 213 § 8.]

## Chapter 46.63

### DISPOSITION OF TRAFFIC INFRACTIONS

#### Sections

46.63.020 Violations as traffic infractions—Exceptions. (*Effective until January 1, 1998.*)

46.63.020 Violations as traffic infractions—Exceptions. (*Effective January 1, 1998.*)

46.63.110 Monetary penalties. (*Effective January 1, 1998.*)

**46.63.020 Violations as traffic infractions—Exceptions.** (*Effective until January 1, 1998.*) Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or

a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(16) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(17) RCW 46.25.170 relating to commercial driver's licenses;

(18) Chapter 46.29 RCW relating to financial responsibility;

(19) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(20) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(21) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(22) RCW 46.48.175 relating to the transportation of dangerous articles;

(23) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(24) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(25) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(26) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(27) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(28) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(29) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(30) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(31) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(32) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(33) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(34) RCW 46.61.500 relating to reckless driving;

(35) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(36) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(37) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(38) RCW 46.61.522 relating to vehicular assault;

(39) RCW 46.61.5249 relating to first degree negligent driving;

(40) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(41) RCW 46.61.530 relating to racing of vehicles on highways;

(42) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(43) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(44) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(45) Chapter 46.65 RCW relating to habitual traffic offenders;

(46) RCW 46.68.010 relating to false statements made to obtain a refund;

(47) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(48) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(49) RCW 46.72A.060 relating to limousine carrier insurance;

(50) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

(51) RCW 46.72A.080 relating to false advertising by a limousine carrier;

(52) Chapter 46.80 RCW relating to motor vehicle wreckers;

(53) Chapter 46.82 RCW relating to driver's training schools;

(54) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(55) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [1997 c 66 § 8. Prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior:

1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

**Effective date—1995 1st sp.s. c 16:** "This act shall take effect September 1, 1995." [1995 1st sp.s. c 16 § 2.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Effective date—1994 c 141:** See note following RCW 46.61.527.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Severability—Effective date—1989 c 353:** See RCW 46.30.900 and 46.30.901.

**Severability—Effective dates—1989 c 178:** See RCW 46.25.900 and 46.25.901.

**Severability—1987 c 388:** See note following RCW 46.20.342.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**Severability—Effective date—1985 c 377:** See RCW 46.55.900 and 46.55.902.

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Severability—1981 c 19:** "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." [1981 c 19 § 7.]

**Effective date—1980 c 148:** See note following RCW 46.10.090.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010

*Allowing unauthorized persons to drive: RCW 46.20.344.*

**46.63.020 Violations as traffic infractions—Exceptions.** (*Effective January 1, 1998.*) Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to initial registration of motor vehicles;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;

(15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(22) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(23) RCW 46.48.175 relating to the transportation of dangerous articles;

(24) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(25) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(26) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(27) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

(28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(30) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(31) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;

(32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(33) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(35) RCW 46.61.500 relating to reckless driving;

(36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(39) RCW 46.61.522 relating to vehicular assault;

(40) RCW 46.61.5249 relating to first degree negligent driving;

(41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(42) RCW 46.61.530 relating to racing of vehicles on highways;

(43) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(44) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(45) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(46) Chapter 46.65 RCW relating to habitual traffic offenders;

(47) RCW 46.68.010 relating to false statements made to obtain a refund;

(48) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(49) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(50) RCW 46.72A.060 relating to limousine carrier insurance;

(51) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

(52) RCW 46.72A.080 relating to false advertising by a limousine carrier;

(53) Chapter 46.80 RCW relating to motor vehicle wreckers;

(54) Chapter 46.82 RCW relating to driver's training schools;

(55) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(56) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [1997 c 229 § 13; 1997 c 66 § 8. Prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

**Reviser's note:** This section was amended by 1997 c 66 § 8 and by 1997 c 229 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 229:** See note following RCW 10.05.090.

**Effective date—1995 1st sp.s. c 16:** "This act shall take effect September 1, 1995." [1995 1st sp.s. c 16 § 2.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015

**Effective date—1994 c 141:** See note following RCW 46.61.527.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Severability—Effective date—1989 c 353:** See RCW 46.30.900 and 46.30.901.

**Severability—Effective dates—1989 c 178:** See RCW 46.25.900 and 46.25.901.

**Severability—1987 c 388:** See note following RCW 46.20.342.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**Severability—Effective date—1985 c 377:** See RCW 46.55.900 and 46.55.902.

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Severability—1981 c 19:** "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" [1981 c 19 § 7.]

**Effective date—1980 c 148:** See note following RCW 46.10.090.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

*Allowing unauthorized persons to drive: RCW 46.20.344.*

**46.63.110 Monetary penalties. (Effective January 1, 1998.)** (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(3) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(4) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(5) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify the department of the failure to pay the penalty, and the department shall suspend the person's driver's license or driving privilege

until the penalty has been paid and the penalty provided in subsection (3) of this section has been paid.

(6) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed a fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040. [1997 c 331 § 3; 1993 c 501 § 11; 1986 c 213 § 2; 1984 c 258 § 330. Prior: 1982 1st ex.s. c 14 § 4; 1982 1st ex.s. c 12 § 1; 1982 c 10 § 13; prior: 1981 c 330 § 7; 1981 c 19 § 6; 1980 c 128 § 4; 1979 ex.s. c 136 § 13.]

**Rules of court: Monetary penalty schedule—JTIR 6.2.**

**Effective date—1997 c 331:** See note following RCW 70.168.135.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010

**Intent—1984 c 258:** See note following RCW 3.46.120.

**Effective date—Severability—1982 1st ex.s. c 14:** See notes following RCW 46.63.060.

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Severability—1981 c 330:** See note following RCW 3.62.060.

**Severability—1981 c 19:** See note following RCW 46.63.020.

**Effective date—Severability—1980 c 128:** See notes following RCW 46.63.060.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

## Chapter 46.68

### DISPOSITION OF REVENUE

#### Sections

46.68.010 Erroneous payments—Refunds, underpayments—Penalty for false statements.

**46.68.010 Erroneous payments—Refunds, underpayments—Penalty for false statements.** Whenever any license fee, paid under the provisions of this title, has been erroneously paid, either wholly or in part, the payor is entitled to have refunded the amount so erroneously paid. A license fee is refundable in one or more of the following circumstances: (1) If the vehicle for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; (2) if the vehicle for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; (3) if the vehicle license was purchased after the owner has sold the vehicle; (4) if the vehicle is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or (5) if the vehicle for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal tabs to the department before the beginning of the registration period for which the registration was purchased. Upon the refund being certified

to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto. No claim for refund shall be allowed for such erroneous payments unless filed with the director within three years after such claimed erroneous payment was made.

If due to error a person has been required to pay a vehicle license fee under this title and an excise tax under Title 82 RCW that amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [1997 c 22 § 1; 1996 c 31 § 1; 1993 c 307 § 2; 1989 c 68 § 1; 1979 c 120 § 1; 1967 c 32 § 73; 1961 c 12 § 46.68.010. Prior: 1937 c 188 § 76; RRS § 6312-76.]

### Chapter 46.70

#### UNFAIR BUSINESS PRACTICES—DEALERS' LICENSES

##### Sections

|           |   |
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| 46.70.023 | Place of business.  |
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**46.70.023 Place of business.** (1) An "established place of business" requires a permanent, enclosed commercial building located within the state of Washington easily accessible at all reasonable times. The business of a vehicle dealer must be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. A vehicle dealer may display a vehicle for sale only at its established place of business, licensed subagency, or temporary subagency site, except at auction. The dealer shall keep the building open to the public so that the public may contact the vehicle dealer or the dealer's salespersons at all reasonable times. The books, records, and files necessary to conduct the business shall be kept and maintained at that place. The established place of business shall display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. A room or rooms in a hotel, rooming house, or apartment house building or part of a single or multiple-unit dwelling house may not be considered an "established place of business" unless the ground floor of such a dwelling is devoted principally to and occupied for commercial purposes and the dealer offices are located on the ground floor. A mobile office or mobile home may be used as an office if it is connected to utilities and is set up

in accordance with state law. A state-wide trade association representing manufactured housing dealers shall be permitted to use a manufactured home as an office if the office complies with all other applicable building code, zoning, and other land-use regulatory ordinances. This subsection does not apply to auction companies that do not own vehicle inventory or sell vehicles from an auction yard.

(2) An auction company shall have office facilities within the state. The books, records, and files necessary to conduct the business shall be maintained at the office facilities. All storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. An auction company shall maintain a telecommunications system.

(3) Auction companies shall post their vehicle dealer license at each auction where vehicles are offered, and shall provide the department with the address of the auction at least three days before the auction.

(4) If a dealer maintains a place of business at more than one location or under more than one name in this state, he or she shall designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each and every subagency: PROVIDED, That the department may grant an exception to the subagency requirement in the specific instance where a licensed dealer is unable to locate their used vehicle sales facilities adjacent to or at the established place of business. This exception shall be granted and defined under the promulgation of rules consistent with the Administrative Procedure Act.

(5) All vehicle dealers shall maintain ownership or leasehold throughout the license year of the real property from which they do business. The dealer shall provide the department with evidence of ownership or leasehold whenever the ownership changes or the lease is terminated.

(6) A subagency shall comply with all requirements of an established place of business, except that subagency records may be kept at the principal place of business designated by the dealer. Auction companies shall comply with the requirements in subsection (2) of this section.

(7) A temporary subagency shall meet all local zoning and building codes for the type of merchandising being conducted. The dealer license certificate shall be posted at the location. No other requirements of an established place of business apply to a temporary subagency. Auction companies are not required to obtain a temporary subagency license.

(8) A wholesale vehicle dealer shall have office facilities in a commercial building within this state, and all storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. A wholesale vehicle dealer shall maintain a telecommunications system. An exterior sign visible from the nearest street shall identify the business name and the nature of business. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

(9) A retail vehicle dealer shall be open during normal business hours, maintain office and display facilities in a commercially zoned location or in a location complying with

all applicable building and land use ordinances, and maintain a business telephone listing in the local directory. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory shall be physically segregated and clearly identified.

(10) A subagency license is not required for a mobile home dealer to display an on-site display model, a consigned mobile home not relocated from its site, or a repossessed mobile home if sales are handled from a principal place of business or subagency. A mobile home dealer shall identify on-site display models, repossessed mobile homes, and those consigned at their sites with a sign that includes the dealer's name and telephone number.

(11) Every vehicle dealer shall advise the department of the location of each and every place of business of the firm and the name or names under which the firm is doing business at such location or locations. If any name or location is changed, the dealer shall notify the department of such change within ten days. The license issued by the department shall reflect the name and location of the firm and shall be posted in a conspicuous place at that location by the dealer.

(12) A vehicle dealer's license shall upon the death or incapacity of an individual vehicle dealer authorize the personal representative of such dealer, subject to payment of license fees, to continue the business for a period of six months from the date of the death or incapacity. [1997 c 432 § 1; 1996 c 282 § 1; 1995 c 7 § 1; 1993 c 307 § 5; 1991 c 339 § 28; 1989 c 301 § 2; 1986 c 241 § 4.]

**46.70.045 Denial of license.** The director may deny a license under this chapter when the application is a subterfuge that conceals the real person in interest whose license has been denied, suspended, or revoked for cause under this chapter and the terms have not been fulfilled or a civil penalty has not been paid, or the director finds that the application was not filed in good faith. This section does not preclude the department from taking an action against a current licensee. [1997 c 432 § 2.]

**46.70.051 Issuance of license—Private party dissemination of vehicle data base.** (1) After the application has been filed, the fee paid, and bond posted, if required, the department shall, if no denial order is in effect and no proceeding is pending under RCW 46.70.101, issue the appropriate license, which license, in the case of a vehicle dealer, shall designate the classification of the dealer. Nothing prohibits a vehicle dealer from obtaining licenses for more than one classification, and nothing prevents any vehicle dealer from dealing in other classes of vehicles on an isolated basis.

(2) An auction company licensed under chapter 18.11 RCW may sell at auction all classifications of vehicles under a motor vehicle dealer's license issued under this chapter including motor vehicles, miscellaneous type vehicles, and mobile homes and travel trailers.

(3) At the time the department issues a vehicle dealer license, the department shall provide to the dealer a current, up-to-date vehicle dealer manual setting forth the various statutes and rules applicable to vehicle dealers. In addition, at the time any such license is renewed under RCW

46.70.083, the department shall provide the dealer with any updates or current revisions to the vehicle dealer manual.

(4) The department may contract with responsible private parties to provide them elements of the vehicle data base on a regular basis. The private parties may only disseminate this information to licensed vehicle dealers.

(a) Subject to the disclosure agreement provisions of RCW 46.12.380 and the requirements of Executive Order 97-01, the department may provide to the contracted private parties the following information:

(i) All vehicle and title data necessary to accurately disclose known title defects, brands, or flags and odometer discrepancies;

(ii) All registered and legal owner information necessary to determine true ownership of the vehicle and the existence of any recorded liens, including but not limited to liens of the department of social and health services or its successor; and

(iii) Any data in the department's possession necessary to calculate the motor vehicle excise tax, license, and registration fees including information necessary to determine the applicability of regional transit authority excise and use tax surcharges.

(b) The department may provide this information in any form the contracted private party and the department agree upon, but if the data is to be transmitted over the Internet or similar public network from the department to the contracted private party, it must be encrypted.

(c) The department shall give these contracted private parties advance written notice of any change in the information referred to in (a)(i), (ii), or (iii) of this subsection, including information pertaining to the calculation of motor vehicle excise taxes.

(d) The department shall revoke a contract made under this subsection (4) with a private party who disseminates information from the vehicle data base to anyone other than a licensed vehicle dealer. A private party who obtains information from the vehicle data base under a contract with the department and disseminates any of that information to anyone other than a licensed vehicle dealer is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(e) Nothing in this subsection (4) authorizes a vehicle dealer or any other organization or entity not otherwise appointed as a vehicle licensing subagent under RCW 46.01.140 to perform any of the functions of a vehicle licensing subagent so appointed. [1997 c 432 § 4; 1996 c 282 § 2; 1993 c 307 § 7; 1989 c 301 § 3; 1973 1st ex.s. c 132 § 6; 1971 ex.s. c 74 § 2; 1967 ex.s. c 74 § 7.]

**46.70.180 Unlawful acts and practices.** Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2) To incorporate within the terms of any purchase and sale agreement any statement or representation with regard to the sale or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold to a person for a consideration and upon further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Taking from a prospective buyer of a vehicle a written order or offer to purchase, or a contract document signed by the buyer, which:

(a) Is subject to the dealer's, or his or her authorized representative's future acceptance, and the dealer fails or refuses within three calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer, either (i) to deliver to the buyer the dealer's signed acceptance, or (ii) to void the order, offer, or contract document and tender the return of any initial payment or security made or given by the buyer, including but not limited to money, check, promissory note, vehicle keys, a trade-in, or certificate of title to a trade-in; or

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer as part of the purchase price, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of

five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesman, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesman, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.



(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales agreement signed by the seller and buyer.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase or sale of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase or sale of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contract, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, or title; or

(c) Signing any other documentation relating to the purchase, sale, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable. The department of licensing shall by December 31, 1996, in rule, adopt standard disclosure language for buyer's agent agreements under RCW 46.70.011, 46.70.070, and this section.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.94 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith.

(c) Encourage, aid, abet, or teach a vehicle dealer to sell vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser of any new or unused vehicle that has been sold, distributed for sale, or transferred into this state for resale by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the



contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050. [1997 c 153 § 1; 1996 c 194 § 3; 1995 c 256 § 26; 1994 c 284 § 13; 1993 c 175 § 3; 1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

**Severability—Effective date—1994 c 284:** See RCW 43.63B.900 and 43.63B.901.

**Severability—1990 c 44:** See RCW 19.116.900.

**Severability—1989 c 415:** See RCW 46.96.900.

**Severability—1985 c 472:** See RCW 46.94.900.

*Glass—Limited windows—Vehicle sale requirements:* RCW 46.37.430.

*Odometers—Disconnecting, resetting, turning back, replacing without notifying purchaser:* RCW 46.37.540 through 46.37.570.

*Tires—Vehicle sale requirements:* RCW 46.37.425.

## Chapter 46.72A LIMOUSINES

### Sections

46.72A.080 Advertising—Penalty.

**46.72A.080 Advertising—Penalty.** (1) No limousine carrier may advertise without listing the carrier's unified business identifier issued by the department in the advertisement and specifying the type of service offered as provided in RCW 46.04.274. No limousine carrier may advertise or hold itself out to the public as providing taxicab transportation services.

(2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a limousine carrier's name or address shall list the carrier's unified business identifier and the type of service offered. The alphabetized listing of limousine carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address must show the carrier's current unified business identifier.

(3) Advertising in the alphabetical listing in a telephone directory need not contain the carrier's certified business identifier.

(4) Advertising by electronic transmission need not contain the carrier's unified business identifier if the carrier provides it to the person selling the advertisement and it is recorded in the advertising contract.

(5) It is a gross misdemeanor for a person to (a) falsify a unified business identifier or use a false or inaccurate unified business identifier; (b) fail to specify the type of service offered; or (c) advertise or otherwise hold itself out to the public as providing taxicab transportation services in connection with a solicitation or identification as an authorized limousine carrier. [1997 c 193 § 1; 1996 c 87 § 11.]

## Chapter 46.74 RIDE SHARING

### Sections

46.74.010 Definitions.

46.74.030 Operators—Reasonable standard of care—Exempted from certain regulations—Limited immunity from liability for operators and promoters.

**46.74.010 Definitions.** The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Commuter ride sharing" means a car pool or van pool arrangement whereby one or more fixed groups not exceeding fifteen persons each including the drivers, and (a) not fewer than five persons including the drivers, or (b) not fewer than four persons including the drivers where at least two of those persons are confined to wheelchairs when riding, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, each group in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institution.

(2) "Flexible commuter ride sharing" means a car pool or van pool arrangement whereby a group of at least two but not exceeding fifteen persons including the driver is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution.

(3) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3) in a passenger motor vehicle as defined by the department to include small buses, cutaways, and modified vans not more than twenty-eight feet long: PROVIDED, That the driver need not be a person with special transportation needs.

(4) "Ride-sharing operator" means the person, entity, or concern, not necessarily the driver, responsible for the existence and continuance of commuter ride sharing, flexible commuter ride sharing, or ride sharing for persons with special transportation needs. The term "ride-sharing operator" includes but is not limited to an employer, an employer's agent, an employer-organized association, a state agency, a county, a city, a public transportation benefit area, or any other political subdivision that owns or leases a ride-sharing vehicle.

(5) "Ride-sharing promotional activities" means those activities involved in forming a commuter ride-sharing arrangement or a flexible commuter ride-sharing arrangement, including but not limited to receiving information from existing and prospective ride-sharing participants, sharing that information with other existing and prospective ride-

sharing participants, matching those persons with other existing or prospective ride-sharing participants, and making assignments of persons to ride-sharing arrangements.

(6) "Persons with special transportation needs" means those persons defined in RCW 81.66.010(4). [1997 c 250 § 8; 1997 c 95 § 1; 1996 c 244 § 2; 1979 c 111 § 1.]

**Reviser's note:** This section was amended by 1997 c 95 § 1 and by 1997 c 250 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1979 c 111:** "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 111 § 21.]

#### **46.74.030 Operators—Reasonable standard of care—Exempted from certain regulations—Limited immunity from liability for operators and promoters.**

The operator and the driver of a commuter ride-sharing vehicle or a flexible commuter ride-sharing vehicle shall be held to a reasonable and ordinary standard of care, and are not subject to ordinances or regulations which relate exclusively to the regulation of drivers or owners of motor vehicles operated for hire, or other common carriers or public transit carriers. No person, entity, or concern may, as a result of engaging in ride-sharing promotional activities, be liable for civil damages arising directly or indirectly (1) from the maintenance and operation of a commuter ride-sharing or flexible commuter ride-sharing vehicle; or (2) from an intentional act of another person who is participating or proposing to participate in a commuter ride-sharing or flexible commuter ride-sharing arrangement, unless the ride-sharing operator or promoter had prior, actual knowledge that the intentional act was likely to occur and had a reasonable ability to prevent the act from occurring. [1997 c 250 § 9; 1996 c 244 § 3; 1979 c 111 § 3.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

### **Chapter 46.87**

#### **PROPORTIONAL REGISTRATION**

(Formerly: International Registration Plan)

##### Sections

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| 46.87.020 | Definitions.  |
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| 46.87.290 | Refusal, cancellation of application, cab card—Procedures, penalties. |
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**46.87.020 Definitions.** Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), the Uniform Vehicle Registration, Proration, and Reciprocity Agreement (Western Compact), chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP and the Western Compact, as applicable, shall prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a

declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles. For IRP jurisdictions that require the registration of nonmotor vehicles, this term may include trailers, semi-trailers, and pole trailers as applicable, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle by the registering jurisdiction under the Western Compact. Under the IRP, it is a certificate of registration issued by the base jurisdiction for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Commercial vehicle" is a term used by the Western Compact and means any vehicle, except recreational vehicles, vehicles displaying restricted plates, and government owned or leased vehicles, that is operated and registered in more than one jurisdiction and is used or maintained for the transportation of persons for hire, compensation, or profit, or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a motor vehicle having a declared gross weight in excess of twenty-six thousand pounds; or

(b) Is a motor vehicle having three or more axles with a declared gross weight in excess of twelve thousand pounds; or

(c) Is a motor vehicle, trailer, pole trailer, or semitrailer used in combination when the gross weight or declared gross weight of the combination exceeds twenty-six thousand pounds combined gross weight. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Although a two-axle motor vehicle, trailer, pole trailer, semitrailer, or any combination of such vehicles with an actual or declared gross weight or declared combined gross weight exceeding twelve thousand pounds but not more than twenty-six thousand is not considered to be a commercial vehicle, at the option of the owner, such vehicles may be considered as "commercial vehicles" for the purpose of proportional registration. The nonmotor vehicles mentioned are only applicable to those jurisdictions requiring the registration of such vehicles.

Commercial vehicles include trucks, tractors, truck tractors, road tractors, and buses. Trailers, pole trailers, and semitrailers, will also be considered as commercial vehicles for those jurisdictions who require registration of such vehicles.

(4) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(5) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(6) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of

a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

(7) "Department" means the department of licensing.

(8) "Fleet" means one or more commercial vehicles in the Western Compact and one or more apportionable vehicles in the IRP.

(9) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(10) "IRP" means the International Registration Plan.

(11) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(13) "Preceding year" means the period of twelve consecutive months immediately before July 1st of the year immediately before the commencement of the registration or license year for which apportioned registration is sought.

(14) "Properly registered," as applied to the place of registration under the provisions of the Western Compact, means:

(a) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which the vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from that place of business, and the vehicle has been assigned to that place of business; or

(b) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by that jurisdiction.

In case of doubt or dispute as to the proper place of registration of a commercial vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected.

(15) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(16) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(17) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

(18) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles.

(19) "Western Compact" means the Uniform Vehicle Registration, Proration, and Reciprocity Agreement. [1997 c 183 § 2; 1994 c 262 § 12; 1993 c 307 § 12; 1991 c 163 § 4; 1990 c 42 § 111; 1987 c 244 § 16; 1985 c 380 § 2.]

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.030 Part-year registration—Credit for unused fees.** (1) When application to register an apportionable or commercial vehicle is made, the Washington prorated fees may be reduced by one-twelfth for each full registration month that has elapsed at the time a temporary authorization permit (TAP) was issued or if no TAP was issued, at such time as an application for registration is received in the department. If a vehicle is being added to a currently registered fleet, the prorate percentage previously established for the fleet for such registration year shall be used in the computation of the proportional fees and taxes due.

(2) If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under this chapter, the registrant of the fleet shall notify the department on appropriate forms prescribed by the department. The department may require the registrant to surrender credentials that were issued to the vehicle. If a motor vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet registrant, the unused portion of the licensing fee paid under RCW 46.16.070 with respect to the vehicle reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first day of the month of the current registration year in which the vehicle was registered and the date the notice of withdrawal, accompanied by such credentials as may be required, is received in the department, shall be credited to the fleet proportional registration account of the registrant. Credit shall be applied against the licensing fee liability for subsequent additions of motor vehicles to be proportionally registered in the fleet during such registration year or for additional licensing fees due under RCW 46.16.070 or to be due upon audit under RCW 46.87.310. If any credit is less than fifteen dollars, no credit will be entered. In lieu of credit, the registrant may choose to transfer the unused portion of the licensing fee for the motor vehicle to the new owner, in which case it shall remain with the motor vehicle for which it was originally paid. In no event may any amount be credited against fees other than those for the registration year from which the credit was

obtained nor is any amount subject to refund. [1997 c 183 § 3; 1993 c 307 § 13; 1987 c 244 § 18; 1986 c 18 § 23; 1985 c 380 § 3.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.120 Mileage data for applications—Nonmotor vehicles.** (1) The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If no operations were conducted with the fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions in which operation is contemplated. The registrant shall determine the in-jurisdiction and total miles to be used in computing the fees and taxes due for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to its correctness. The department shall require a minimum estimated mileage of one trip state-line-to-state-line in each jurisdiction the carrier registers for operations.

(2) Fleets will consist of either motor vehicles or nonmotor vehicles, but not a mixture of both.

(3) In instances where the use of mileage accumulated by a nonmotor vehicle fleet is impractical, for the purpose of calculating prorate percentages, the registrant may request another method and/or unit of measure to be used in determining the prorate percentages. Upon receiving such request, the department may prescribe another method and/or unit of measure to be used in lieu of mileage that will ensure each jurisdiction that requires the registration of nonmotor vehicles its fair share of vehicle licensing fees and taxes.

(4) When operations of a Washington-based fleet is materially changed through merger, acquisition, or extended authority, the registrant shall notify the department, which shall then require the filing of an amended application setting forth the proposed operation by use of estimated mileage for all jurisdictions. The department may adjust the estimated mileage by audit or otherwise to an actual travel basis to insure proper fee payment. The actual travel basis may be used for determination of fee payments until such time as a normal mileage year is available under the new operation. Under the provisions of the Western Compact, this subsection applies to any fleet proportionally registered in Washington irrespective of the fleet's base jurisdiction. [1997 c 183 § 4; 1990 c 42 § 113; 1987 c 244 § 25.]

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date.** (1) Any owner engaged in interstate operations of one or more fleets of apportionable or commercial vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The nonmotor vehicles of Washington-based fleets which are operated in IRP jurisdictions that require registration of such vehicles may be proportionally registered for operation in those jurisdictions as herein provided. The application shall contain the following information and such

other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet. Motor vehicles and nonpower units shall be placed in separate fleets.

(b) If registering under the provisions of the IRP, the registrant shall also indicate member jurisdictions in which registration is desired and furnish such other information as those member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorate percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Washington-based nonmotor vehicles shall normally be fully licensed under the provisions of chapter 46.16 RCW. If these vehicles are being operated in jurisdictions that require the registration of such vehicles, the applicable vehicles may be considered as apportionable vehicles for the purpose of registration in those jurisdictions and this state. The prorate percentage for which registration fees and taxes were paid to such jurisdictions may be credited toward the one hundred percent of registration fees and taxes due this state for full licensing. Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, 82.38.075, and 82.44.020, as applicable. If, during the registration period, the lessor of an apportioned vehicle changes and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorate percentage applicable to the desired jurisdiction and round the results to the nearest cent. Fees and taxes for nonmotor vehicles being prorated will be calculated as indicated in (b) of this subsection.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) Add the total fees and taxes determined in (d) of this subsection for each vehicle listed on the application. Assuming the fees and taxes calculated were for Washington, this would be the amount due and payable for the application under the provisions of the Western Compact. Under the provisions of the IRP, the amount due and payable for the application would be the sum of the fees and taxes referred to in (d) of this subsection, calculated for each

member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter. [1997 c 183 § 5; 1991 c 339 § 10; 1990 c 42 § 114; 1987 c 244 § 27.]

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—1987 c 244:** See note following RCW 46.12.020

**46.87.290 Refusal, cancellation of application, cab card—Procedures, penalties.** If the department determines at any time that an applicant for proportional registration of a vehicle or a fleet of vehicles is not entitled to a cab card for a vehicle or fleet of vehicles, the department may refuse to issue the cab card(s) or to license the vehicle or fleet of vehicles and may for like reason, after notice, and in the exercise of discretion, cancel the cab card(s) and license plate(s) already issued. The department shall send the notice of cancellation by first class mail, addressed to the owner of the vehicle in question at the owner's address as it appears in the proportional registration records of the department, and record the transmittal on an affidavit of first class mail. It is then unlawful for any person to remove, drive, or operate the vehicle(s) until a proper certificate(s) of registration or cab card(s) has been issued. Any person removing, driving, or operating the vehicle(s) after the refusal of the department to issue a cab card(s), certificate(s) of registration, license plate(s), or the revocation or cancellation of the cab card(s), certificate(s) of registration, or license plate(s) is guilty of a gross misdemeanor. At the discretion of the department, a vehicle that has been moved, driven, or operated in violation of this section may be impounded by the Washington state patrol, county sheriff, or city police in a manner directed for such cases by the chief of the Washington state patrol until proper registration and license plate have been issued. [1997 c 183 § 6; 1987 c 244 § 42.]

**Effective dates—1987 c 244:** See note following RCW 46.12.020.

**46.87.410 Bankruptcy proceedings—Notice.** A proportional registration licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 1.]

## Title 47

### PUBLIC HIGHWAYS AND TRANSPORTATION

#### Chapters

- 47.04 General provisions.
- 47.06 State-wide transportation planning.
- 47.12 Acquisition and disposition of state highway property.

- 47.17 State highway routes.
- 47.26 Development in urban areas—Urban arterials.
- 47.60 Puget Sound ferry and toll bridge system.
- 47.64 Marine employees—Public employment relations.
- 47.68 Aeronautics.
- 47.78 High capacity transportation development.

#### Chapter 47.04

#### GENERAL PROVISIONS

##### Sections

- 47.04.210 Reimbursable transportation expenditures—Processing and accounting.
- 47.04.220 Miscellaneous transportation programs account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Chapter 47.06

### STATE-WIDE TRANSPORTATION PLANNING

#### Sections

47.06.030 Transportation policy plan.

**47.06.030 Transportation policy plan.** The commission shall develop a state transportation policy plan that (1) establishes a vision and goals for the development of the state-wide transportation system consistent with the state's growth management goals, (2) identifies significant state-wide transportation policy issues, and (3) recommends state-

wide transportation policies and strategies to the legislature to fulfill the requirements of RCW 47.01.071(1). The state transportation policy plan shall be the product of an ongoing process that involves representatives of significant transportation interests and the general public from across the state. The plan shall address how the department of transportation will meet the transportation needs and expedite the completion of industrial projects of state-wide significance. [1997 c 369 § 8; 1993 c 446 § 3.]

*Industrial project of state-wide significance—Defined: RCW 43.157.010.*

## Chapter 47.12

### ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

#### Sections

- 47.12.140 Severance and sale of timber and other personalty—Removal of nonmarketable materials.
- 47.12.330 Advanced environmental mitigation—Authorized.
- 47.12.340 Advanced environmental mitigation revolving account.
- 47.12.350 Advanced environmental mitigation—Site management—Reimbursement of account.
- 47.12.360 Advanced environmental mitigation—Reports.

**47.12.140 Severance and sale of timber and other personalty—Removal of nonmarketable materials.** Whenever the department has acquired any lands for transportation purposes, except state granted lands, upon which are located any structures, timber, or other thing of value attached to the land that the department deems it best to sever from the land and sell as personal property, the same may be disposed of by one of the following means:

(1) The department may sell the personal property at public auction after due notice has been given in accordance with general rules adopted by the secretary. The department may set minimum prices that will be accepted for any item offered for sale at public auction as provided in this section and may prescribe terms or conditions of sale. If an item is offered for sale at the auction and no satisfactory bids are received or the amount bid is less than the minimum set by the department, the department may sell the item at private sale for the best price that it deems obtainable, but not less than the highest price bid at the public auction. The proceeds of all sales under this section must be placed in the motor vehicle fund.

(2) The department may issue permits to residents of this state to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils that have no market value in place and that the department desires to be removed from state-owned lands that are under the jurisdiction of the department. An applicant for a permit must certify that the materials so removed are to be used by the applicant and that they will not be disposed of to any other person. Removal of materials under the permit must be in accordance with rules adopted by the department. The fee for a permit is two dollars and fifty cents, which fee must be deposited in the motor vehicle fund. The department may adopt rules providing for special access to limited access facilities for the purpose of removal of materials under permits authorized in this section.

(3) The department may sell timber or logs to an abutting landowner for cash at full appraised value, but only

after each other abutting owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting owner requests in writing the right to purchase the timber within fifteen days after receiving notice of the proposed sale, the timber must be sold in accordance with subsection (1) of this section.

(4) The department may sell timber or logs having an appraised value of one thousand dollars or less directly to interested parties for cash at the full appraised value without notice or advertising. If the timber is attached to state-owned land, the department shall issue a permit to the purchaser of the timber to allow for the removal of the materials from state land. The permit fee is two dollars and fifty cents. [1997 c 240 § 1; 1981 c 260 § 12. Prior: 1977 ex.s. c 151 § 52; 1977 ex.s. c 78 § 6; 1961 c 13 § 47.12.140; prior: 1953 c 42 § 1.]

**47.12.330 Advanced environmental mitigation—Authorized.** For the purpose of environmental mitigation of transportation projects, the department may acquire or develop, or both acquire and develop, environmental mitigation sites in advance of the construction of programmed projects. The term "advanced environmental mitigation" means mitigation of adverse impacts upon the environment from transportation projects before their design and construction. Advanced environmental mitigation consists of the acquisition of property; the acquisition of property, water, or air rights; the development of property for the purposes of improved environmental management; engineering costs necessary for such purchase and development; and the use of advanced environmental mitigation sites to fulfill project environmental permit requirements. Advanced environmental mitigation must be conducted in a manner that is consistent with the definition of mitigation found in the council of environmental quality regulations (40 C.F.R. Sec. 1508.20) and the governor's executive order on wetlands (EO 90-04). Advanced environmental mitigation is for projects approved by the transportation commission as part of the state's six-year plan or included in the state highway system plan. Advanced environmental mitigation may also be conducted in partnership with federal, state, or local government agencies, tribal governments, interest groups, or private parties. Partnership arrangements may include joint acquisition and development of mitigation sites, purchasing and selling mitigation bank credits among participants, and transfer of mitigation site title from one party to another. Specific conditions of partnership arrangements will be developed in written agreements for each applicable environmental mitigation site. [1997 c 140 § 2.]

**Intent—1997 c 140:** "It is the intent of chapter 140, Laws of 1997 to provide environmental mitigation in advance of the construction of programmed projects where desirable and feasible, [which] will provide a more efficient and predictable environmental permit process, increased benefits to environmental resources, and a key tool in using the watershed approach for environmental impact mitigation. The legislative transportation committee, through its adoption of the December 1994 report "Environmental Cost Savings and Permit Coordination Study," encourages state agencies to use a watershed approach based on a water resource inventory area in an improved environmental mitigation and permitting process. Establishment of an advanced transportation environmental mitigation revolving account would help the state to improve permit processes and environmental protection when providing transportation services." [1997 c 140 § 1.]

**47.12.340 Advanced environmental mitigation revolving account.** The advanced environmental mitigation revolving account is created in the custody of the treasurer, into which the department shall deposit directly and may expend without appropriation:

(1) An initial appropriation included in the department of transportation's 1997-99 budget, and deposits from other identified sources;

(2) All moneys received by the department from internal and external sources for the purposes of conducting advanced environmental mitigation; and

(3) Interest gained from the management of the advanced environmental mitigation revolving account. [1997 c 140 § 3.]

**Intent—1997 c 140:** See note following RCW 47.12.330.

**47.12.350 Advanced environmental mitigation—Site management—Reimbursement of account.** (1) After advanced environmental mitigation is conducted from funds in the advanced environmental mitigation revolving account, the advanced environmental mitigation sites must be managed in accordance with any permits, agreements, or other legal documents under which the subject advanced environmental mitigation is conducted.

(2) When the department or any of its transportation partners proceeds with the construction of a transportation project that will use advanced environmental mitigation sites to meet the environmental mitigation needs of a project, the advanced environmental mitigation revolving account shall be reimbursed from those transportation project funds appropriated for the use of the advanced environmental mitigation sites. Reimbursements to the advanced environmental mitigation revolving account must be paid at a rate that captures:

(a) Projected land acquisition costs for environmental mitigation for the subject transportation project;

(b) Advanced environmental mitigation site development costs;

(c) Advanced environmental mitigation site operational costs (e.g., site monitoring);

(d) Administrative costs for the management of the advanced environmental revolving account.

These costs must be adjusted based on inflation, as appropriate.

When only a portion of an advanced environmental mitigation site is used, the reimbursement rate charged to the purchasing party will be prorated for the portion used. [1997 c 140 § 4.]

**Intent—1997 c 140:** See note following RCW 47.12.330.

**47.12.360 Advanced environmental mitigation—Reports.** By January 1st of each odd-numbered year, the department shall report to the legislative transportation committee and the office of financial management:

(1) Which properties were purchased and why;

(2) Expenditures for the acquired parcels; and

(3) Estimated savings from these actions. [1997 c 140 § 5.]

**Intent—1997 c 140:** See note following RCW 47.12.330.



**Chapter 47.17**  
**STATE HIGHWAY ROUTES**

## Sections

47.17.005 State route No. 2.  
47.17.132 State route No. 35.  
47.17.133 State route No. 41.

**47.17.005 State route No. 2.** A state highway to be known as state route number 2 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence easterly by way of Monroe, Stevens Pass, and Leavenworth to a junction with state route number 97 in the vicinity of Peshastin; also

From a junction with state route number 97 in the vicinity of Peshastin, thence easterly by way of Wenatchee, to a junction with state route number 97 in the vicinity of Orondo, thence easterly by way of Waterville, Wilbur, and Davenport to a junction with state route number 90 in the vicinity west of Spokane; also

Beginning at a junction with state route number 90 at Spokane, thence northerly to a junction with state route number 395 in the vicinity north of Spokane; also

From a junction with state route number 395 in the vicinity north of Spokane, thence northerly to a junction with state route number 20 at Newport; also

From a junction with state route number 20 at Newport, thence easterly to the Washington-Idaho boundary line. [1997 c 155 § 1; 1987 c 199 § 1; 1970 ex.s. c 51 § 2.]

**Purpose—1970 ex.s. c 51:** "This act is intended to assign state route numbers to existing state highways duly established by prior legislative act in lieu of primary state highway numbers and secondary state highway numbers. Nothing contained herein is intended to add any new section of highway to the state highway system or delete any section of highway from the state highway system." [1970 ex.s. c 51 § 179.] For codification of 1970 ex.s. c 51, see Codification Tables, Volume 0.

**47.17.132 State route No. 35.** A state highway to be known as state route number 35 is established as follows:

Beginning at the Washington-Oregon boundary line thence northerly to a junction with state route number 14 in the vicinity of White Salmon; however, until such time as a bridge across the Columbia River is constructed at a location adopted by the transportation commission no existing route may be maintained or improved by the transportation commission as a temporary route for state route number 35. [1997 c 308 § 1.]

**47.17.133 State route No. 41.** A state highway to be known as state route number 41 is established as follows:

Beginning at a junction with state route number 2 in Newport, thence southerly along the Washington-Idaho boundary line to Fourth Street in Newport. [1997 c 155 § 2.]

**Chapter 47.26**

**DEVELOPMENT IN URBAN AREAS—URBAN ARTERIALS**

## Sections

47.26.506 Repayment procedure—Bond retirement account.

**47.26.506 Repayment procedure—Bond retirement account.** At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.505 the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments under RCW 47.26.500 through 47.26.507 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to RCW 47.26.505, shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the transportation improvement board bond retirement account, maintained in the office of the state treasurer, which account shall be available for payment of principal and interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1997 c 456 § 24; 1993 c 440 § 7.]

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**Chapter 47.60**

**PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM**

## Sections

47.60.135 Charter of state ferries for transporting hazardous materials.

**47.60.135 Charter of state ferries for transporting hazardous materials.** (1) The charter use of Washington State Ferry vessels when established route operations and normal user requirements are not disrupted is permissible.

(2) Consistent with the policy as established in subsection (1) of this section, the general manager of the Washington State Ferries may approve agreements for the chartering of Washington State Ferry vessels to groups or individuals, including hazardous material transporters, in accordance with the following:

(a) Vessels may be committed to charter only when established route operation and normal user requirements are not disrupted or inconvenienced. If a vessel is engaged in the transport of hazardous materials, the transporter shall pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of Washington State Ferries.

(b) Charter rates for vessels must be established at actual vessel operating costs plus fifty percent of such actual costs rounded to the nearest fifty dollars. Actual vessel operating costs include, but are not limited to, all labor, fuel, and vessel maintenance costs incurred due to the charter agreement, including deadheading and standby.



(c) Recognizing the need for stabilized charter rates in order to encourage use of vessels, rates must be established and revised July 1st of each year and must remain fixed for a one-year period unless actual vessel operating costs increase five percent or more within that year, in which case the charter rates must be revised in accordance with (b) of this subsection.

(d) All charter agreements must be in writing and substantially in the form of (e) of this subsection and available, with calculations, for inspection by the legislature and the public.

(e) Parties chartering Washington State Ferry vessels shall comply with all applicable laws, rules, and regulations during the charter voyage, and failure to so comply is cause for immediate termination of the charter voyage.

"CHARTER CRUISE AGREEMENT

On this . . . . day of . . . ., . . . ., Washington State Ferries (WSF) and . . . ., hereinafter called Lessee, enter into this agreement for rental of a ferry vessel for the purpose of a charter voyage to be held on . . . ., the parties agree as follows:

1. WSF agrees to supply the vessel . . . . (subject to change) for the use of the Lessee from the period from . . . . to . . . . on . . . . (date).

2. The maximum number of passengers; or in the case of hazardous materials transports, trucks and trailers; that will be accommodated on the assigned vessel is . . . . This number MAY NOT be exceeded.

3. The voyage will originate at . . . ., and the route of travel during the voyage will be as follows:  
. . . . .

4. The charge for the above voyage is . . . . dollars (\$) plus a property damage deposit of \$350 for a total price of \$ . . . ., to be paid by cashier's check three working days before the date of the voyage at the offices of the WSF at Seattle Ferry Terminal, Pier 52, Seattle, Washington 98104. The Lessee remains responsible for property damage in excess of \$350.

5. WSF is responsible only for the navigational operation of the chartered ferry and in no way is responsible for directing voyage activities, providing equipment, or any food service.

6. Other than for hazardous materials transport, the voyage activities must be conducted exclusively on the passenger decks of the assigned ferry. Voyage patrons will not be permitted to enter the pilot house or the engine room, nor shall the vehicle decks be used for any purpose other than loading or unloading of voyage patrons or hazardous materials.

7. If the Lessee or any of the voyage patrons will possess or consume alcoholic beverages aboard the vessel, the Lessee must obtain the appropriate licenses or permits from the Washington State Liquor Control Board. The Lessee must furnish copies of any necessary licenses or permits to WSF at the same time payment for the voyage is made. Failure to comply with applicable laws, rules, and regulations of appropriate State and Federal agencies is cause

for immediate termination of the voyage, and WSF shall retain all payments made as liquidated damages.

8. WSF is not obligated to provide shoreside parking for the vehicles belonging to voyage patrons.

9. The Lessee recognizes that the primary function of the WSF is for the cross-Sound transportation of the public and the maintaining of the existing schedule. The Lessee recognizes therefore the right of WSF to cancel a voyage commitment without liability to the Lessee due to unforeseen circumstances or events that require the use of the chartered vessel on its scheduled route operations. In the event of such a cancellation, WSF agrees to refund the entire amount of the charter fee to the Lessee.

10. The Lessee agrees to hold WSF harmless from, and shall process and defend at its own expense, all claims, demands, or suits at law or equity, of whatever nature brought against WSF arising in whole or in part from the performance of provisions of this agreement. This indemnity provision does not require the Lessee to defend or indemnify WSF against any action based solely on the alleged negligence of WSF.

11. This writing is the full agreement between the parties.

. . . . . WASHINGTON STATE FERRIES  
Lessee

By: . . . . . By: . . . . .  
General Manager"

[1997 c 323 § 2.]

**Finding—1997 c 323:** "The legislature finds that when established route operations and normal user requirements are not disrupted Washington state ferries may be used for the transportation of hazardous materials under the chartering procedures and rates described in RCW 47.60.135." [1997 c 323 § 1.]

**Chapter 47.64**

**MARINE EMPLOYEES—PUBLIC EMPLOYMENT RELATIONS**

Sections

47.64.120 Scope of negotiations—Interest on retroactive compensation increases.

**47.64.120 Scope of negotiations—Interest on retroactive compensation increases.** (1) Ferry system management and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times, to negotiate in good faith with respect to wages, hours, working conditions, insurance, and health care benefits as limited by RCW 47.64.270, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive

compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. [1997 c 436 § 1; 1983 c 15 § 3.]

## Chapter 47.68

### AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

#### Sections

47.68.235 License or certificate suspension—Noncompliance with support order—Reissuance.

**47.68.235 License or certificate suspension—Noncompliance with support order—Reissuance.** The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 859.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 47.78

### HIGH CAPACITY TRANSPORTATION DEVELOPMENT

(Formerly: Rail service development)

#### Sections

47.78.010 High capacity transportation account. (*Expires June 30, 1999.*)

**47.78.010 High capacity transportation account.** (*Expires June 30, 1999.*) There is hereby established in the state treasury the high capacity transportation account. Money in the account shall be used, after appropriation, for local high capacity transportation purposes including rail

freight, activities associated with freight mobility, and commute trip reduction activities. [1997 c 457 § 513; (1995 2nd sp.s. c 14 § 528 expired June 30, 1997); 1991 sp.s. c 13 §§ 66, 121; 1990 c 43 § 47; 1987 c 428 § 1.]

**Expiration date—1997 c 457 § 513:** "Section 513 of this act expires June 30, 1999." [1997 c 457 § 514.]

**Severability—1997 c 457:** "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." [1997 c 457 § 701.]

**Effective date—1997 c 457:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 457 § 702.]

**Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533:** See note following RCW 43.105.017.

**Effective dates—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Severability—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Construction—Severability—Headings—1990 c 43:** See notes following RCW 81.100.010.

**Effective date—1987 c 428:** "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, 1987." [1987 c 428 § 4.]

## Title 48 INSURANCE

### Chapters

- 48.05 Insurers—General requirements.
- 48.12 Assets and liabilities.
- 48.13 Investments.
- 48.14 Fees and taxes.
- 48.15 Unauthorized insurers.
- 48.17 Agents, brokers, solicitors, and adjusters.
- 48.18 The insurance contract.
- 48.19 Rates.
- 48.20 Disability insurance.
- 48.21 Group and blanket disability insurance.
- 48.22 Casualty insurance.
- 48.23A Life insurance policy illustrations.
- 48.29 Title insurers.
- 48.30 Unfair practices and frauds.
- 48.30A Insurance fraud.
- 48.32 Washington insurance guaranty association act.
- 48.32A Washington life and disability insurance guaranty association act.
- 48.41 Health insurance coverage access act.
- 48.42 Personal coverage, general authority.
- 48.43 Insurance reform.
- 48.44 Health care services.
- 48.46 Health maintenance organizations.
- 48.47 Mandated health benefits.

## Chapter 48.05

## INSURERS—GENERAL REQUIREMENTS

## Sections

48.05.300 Repealed.

**48.05.300 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 48.12

## ASSETS AND LIABILITIES

## Sections

- 48.12.154 Rules.  
 48.12.156 Qualified United States financial institution—Definition.  
 48.12.158 Insolvency of non-United States insurer or reinsurer—Maintenance of assets—Claims.  
 48.12.160 Credit for reinsurance—Trust fund—Regulatory oversight.  
 48.12.162 Credit for reinsurance—Contract provisions—After December 31, 1996—Payment—Rights of original insured or policyholder.  
 48.12.164 Credit for reinsurance—Accounting or financial statement—After December 31, 1996.  
 48.12.166 Assuming alien reinsurer—Registration—Requirements—Duties of commissioner—Costs.  
 48.12.168 Credit for reinsurance—Foreign ceding insurer.

**48.12.154 Rules.** The commissioner may adopt rules to implement and administer chapter 379, Laws of 1997. [1997 c 379 § 9.]

**Purpose—Intent—1997 c 379:** See note following RCW 48.12.156.

**48.12.156 Qualified United States financial institution—Definition.** For purposes of chapter 379, Laws of 1997, a "qualified United States financial institution" means an institution that complies with all of the following:

- (1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies;
- (3) Has been determined by the commissioner, or, in the discretion of the commissioner, the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner; and

(4) Is not affiliated with the assuming company. [1997 c 379 § 2.]

**Purpose—Intent—1997 c 379:** "(1) The purpose of this act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally.

(2) It is the intent of the legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations.

(3) It is also the intent of the legislature to declare that the matters contained in this act are fundamental to the business of insurance and to exercise its powers and privileges under 15 U.S.C. Secs. 1011 and 1012." [1997 c 379 § 1.]

**48.12.158 Insolvency of non-United States insurer or reinsurer—Maintenance of assets—Claims.** Upon

insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with chapter 379, Laws of 1997, the assets representing the security must be maintained in the United States and claims must be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. [1997 c 379 § 3.]

**Purpose—Intent—1997 c 379:** See note following RCW 48.12.156.

**48.12.160 Credit for reinsurance—Trust fund—Regulatory oversight.** (1) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss or claim, unearned premium, or life policy or contract reserves on risks ceded to a reinsurer to the extent reinsured by an insurer or insurers holding a certificate of authority to transact that kind of business in this state, unless the assuming insurer is the subject of a regulatory order or regulatory oversight by a state in which it is licensed based upon a commissioner's determination that the assuming insurer is in a hazardous financial condition. The credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken:

(a) Where the reinsurer is a group including incorporated and unincorporated underwriters, and the group maintains a trust fund in a qualified United States financial institution which trust fund must be in an amount equal to:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled insurers to any member of the group; or

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of chapter 379, Laws of 1997, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States.

In addition, the group shall maintain a trustee surplus of which one hundred million dollars shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group.

The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants;

(b) Where the reinsurer does not meet the definition of (a) of this subsection, the single assuming alien reinsurer that, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in a qualified United States financial institution, which trust fund must be in an amount not less than the assuming alien reinsurer's liabilities attributable to reinsurance ceded by United States domiciled

insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars, and the assuming alien reinsurer maintaining the trust fund must have received a registration from the commissioner under RCW 48.12.166. The assuming alien reinsurer shall report on or before February 28th to the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund;

(c) In an amount not exceeding:

(i) The amount of deposits by and funds withheld from the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if the deposits or funds are assets of the types and amounts that are authorized under chapter 48.13 RCW and are held subject to withdrawal by and under the control of the ceding insurer or if the deposits or funds are placed in trust for these purposes in a bank which is a member of the federal reserve system and withdrawals from the trust cannot be made without the consent of the ceding company; or

(ii) The amount of a clean, irrevocable, and unconditional letter of credit issued by a United States bank that is determined by the national association of insurance commissioners to meet credit standards for issuing letters of credit in connection with reinsurance, and issued for a term of at least one year with provisions that it must be renewed unless the bank gives notice of nonrenewal at least thirty days before the expiration issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under (c)(i) of this subsection.

(2) Credit for reinsurance may not be granted under subsection (1)(a), (b), and (c)(i) of this section unless:

(a) The form of the trust and amendments to the trust have been approved by the insurance commissioner of the state where the trust is located, or the insurance commissioner of another state who, pursuant to the terms of the trust agreement, has accepted principal regulatory oversight of the trust;

(b) The trust and trust amendments are filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled;

(c) The trust instrument provides that contested claims are valid, enforceable, and payable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of a court of competent jurisdiction in the United States;

(d) The trust vests legal title to its assets in the trustees of the trust for the benefit of the grantor's United States ceding insurers, their assigns, and successors in interest;

(e) The trust and the assuming insurer are subject to examination as determined by the commissioner;

(f) The trust shall remain in effect for as long as the assuming insurer, member, or former member of a group of insurers has outstanding obligations due under the reinsurance agreements subject to the trust; and

(g) No later than [than] February 28th of each year, the trustees of the trust report to the commissioner in writing setting forth the balance of the trust and listing the trust's

investments at the preceding year end. In addition, the trustees of the trust shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire within the next twelve months.

(3) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must be payable by the assuming insurer on the basis of liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company, and any such reinsurance agreement which may be canceled on less than ninety days notice must provide for a run-off of the reinsurance in force at the date of cancellation.

(4) The domiciliary conservator, liquidator, receiver, or statutory successor of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor.

The expense thus incurred by the assuming insurer shall be chargeable subject to court approval against the insolvent ceding insurer as a part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(5) Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

(6) The credit permitted by subsection (1)(b) of this section is prohibited unless the assuming alien insurer agrees in the trust agreement, notwithstanding other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (1)(b) of this section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile:

(a) To comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund;

(b) That assets be distributed by, and insurance claims of United States trust beneficiaries be filed with and valued by, the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) That if the commissioner with regulatory oversight determines that the assets of the trust fund or a part thereof are not necessary to satisfy the claims of the United States ceding insurers, which are United States trust beneficiaries,

the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) That the grantor waives any right otherwise available to it under United States law that is inconsistent with this provision. [1997 c 379 § 6; 1996 c 297 § 1; 1994 c 86 § 1; 1993 c 91 § 2; 1977 ex.s. c 180 § 3; 1947 c 79 § .12.16; Rem. Supp. 1947 § 45.12.16.]

**Purpose—Intent—1997 c 379:** See note following RCW 48.12.156.

**Rules to implement—1996 c 297:** "The insurance commissioner shall adopt rules to implement and administer the amendatory changes made by section 1, chapter 297, Laws of 1996." [1996 c 297 § 2.]

**Effective dates—1996 c 297:** "(1) Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996].

(2) Section 1 of this act shall take effect January 1, 1997." [1996 c 297 § 4.]

**Effective date—1994 c 86:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 86 § 3.]

**48.12.162 Credit for reinsurance—Contract provisions—After December 31, 1996—Payment—Rights of original insured or policyholder.** (1) Credit for reinsurance in a reinsurance contract entered into after December 31, 1996, is allowed a domestic ceding insurer as either an asset or a deduction from liability in accordance with RCW 48.12.160 only if the reinsurance contract contains provisions that provide, in substance, as follows:

(a) The reinsurer shall indemnify the ceding insurer against all or a portion of the risk it assumed according to the terms and conditions contained in the reinsurance contract.

(b) In the event of insolvency and the appointment of a conservator, liquidator, or statutory successor of the ceding company, the portion of risk or obligation assumed by the reinsurer is payable to the conservator, liquidator, or statutory successor on the basis of claims allowed against the insolvent company by a court of competent jurisdiction or by a conservator, liquidator, or statutory successor of the company having authority to allow such claims, without diminution because of that insolvency, or because the conservator, liquidator, or statutory successor failed to pay all or a portion of any claims. Payments by the reinsurer as provided in this subsection are made directly to the ceding insurer or to its conservator, liquidator, or statutory successor, except where the contract of insurance, reinsurance, or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer.

(2) Payment under a reinsurance contract must be made within a reasonable time with reasonable provision for verification in accordance with the terms of the reinsurance agreement. However, in no event shall the payments be beyond the period required by the national association of insurance commissioners accounting practices and procedures manual.

(3) The original insured or policyholder may not have any rights against the reinsurer that are not specifically set forth in the contract of reinsurance, or in a specific agree-

ment between the reinsurer and the original insured or policyholder. [1997 c 379 § 4.]

**Purpose—Intent—1997 c 379:** See note following RCW 48.12.156.

**48.12.164 Credit for reinsurance—Accounting or financial statement—After December 31, 1996.** Credit for reinsurance, as either an asset or a deduction, is prohibited in an accounting or financial statement of the ceding insurer in respect to the reinsurance contract unless, in such contract, the reinsurer undertakes to indemnify the ceding insurer against all or a part of the loss or liability arising out of the original insurance. This section only applies to those reinsurance contracts entered into after December 31, 1996. [1997 c 379 § 5.]

**Purpose—Intent—1997 c 379:** See note following RCW 48.12.156.

**48.12.166 Assuming alien reinsurer—Registration—Requirements—Duties of commissioner—Costs.** (1) The assuming alien reinsurer must register with the commissioner and must:

(a) File with the commissioner evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records under chapter 48.03 RCW;

(b) Designate the commissioner as its lawful attorney upon whom service of all papers may be made for an action, suit, or proceeding instituted by or on behalf of the ceding insurer;

(c) File with the commissioner a certified copy of a letter or a certificate of authority or a certificate of compliance issued by the assuming alien insurer's domiciliary jurisdiction and the domiciliary jurisdiction of its United States reinsurance trust;

(d) Submit a statement, signed and verified by an officer of the assuming alien insurer to be true and correct, that discloses whether the assuming alien insurer or an affiliated person who owns or has a controlling interest in the assuming alien insurer is currently known to be the subject of one or more of the following:

(i) An order or proceeding regarding conservation, liquidation, or receivership;

(ii) An order or proceeding regarding the revocation or suspension of a license or accreditation to transact insurance or reinsurance in any jurisdiction; or

(iii) An order or proceeding brought by an insurance regulator in any jurisdiction seeking to restrict or stop the assuming alien insurer from transacting insurance or reinsurance based upon a hazardous financial condition.

The assuming alien insurer shall provide the commissioner with copies of all orders or other documents initiating proceedings subject to disclosure under this subsection. The statement must affirm that no actions, proceedings, or orders subject to this subsection are outstanding against the assuming alien insurer or an affiliated person who owns or has a controlling interest in the assuming alien insurer, except as disclosed in the statement;

(e) File other information, financial or otherwise, which the commissioner reasonably requests.

(2) A registration continues in force until suspended, revoked, or not renewed. A registration is subject to renewal annually on the first day of July upon application of the assuming alien insurer and payment of the fee in the same

amount as an insurer pays for renewal of a certificate of authority.

(3) The commissioner shall give an assuming alien insurer notice of his or her intention to revoke or refuse to renew its registration at least ten days before the order of revocation or refusal is to become effective.

(4) The commissioner shall, consistent with chapters 48.04 and 34.05 RCW, deny or revoke an assuming alien insurer's registration if the assuming alien insurer no longer qualifies or meets the requirements for registration.

(5) The commissioner may, consistent with chapters 48.04 and 34.05 RCW, deny or revoke an assuming alien insurer's registration if the assuming alien insurer:

(a) Fails to comply with a provision of this chapter or fails to comply with an order or regulation of the commissioner;

(b) Is found by the commissioner to be in such a condition that its further transaction of reinsurance would be hazardous to ceding insurers, policyholders, or the people in this state;

(c) Refuses to remove or discharge a trustee, director, or officer who has been convicted of a crime involving fraud, dishonesty, or moral turpitude;

(d) Usually compels policy-holding claimants either to accept less than the amount due them or to bring suit against the assuming alien insurer to secure full payment of the amount due;

(e) Refuses to be examined, or its trustees, directors, officers, employees, or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform a legal obligation relative to the examination;

(f) Refuses to submit to the jurisdiction of the United States courts;

(g) Fails to pay a final judgment rendered against it:

(i) Within thirty days after the judgment became final;

(ii) Within thirty days after time for taking an appeal has expired; or

(iii) Within thirty days after dismissal of an appeal before final determination;

whichever date is later;

(h) Is found by the commissioner, after investigation or upon receipt of reliable information:

(i) To be managed by persons, whether by its trustees, directors, officers, or by other means, who are incompetent or untrustworthy or so lacking in insurance company management experience as to make proposed operation hazardous to the insurance-buying public; or

(ii) That there is good reason to believe it is affiliated directly or indirectly through ownership, control, or business relations, with a person or persons whose business operations are, or have been found to be, in violation of any law or rule, to the detriment of policyholders, stockholders, investors, creditors, or of the public, by bad faith or by manipulation of the assets, accounts, or reinsurance;

(i) Does business through reinsurance intermediaries or other representatives in this state or in any other state, who are not properly licensed under applicable laws and rules; or

(j) Fails to pay, by the date due, any amounts required by this code.

(6) A domestic ceding insurer is not allowed credit with respect to reinsurance ceded, if the assuming alien insurer's registration has been revoked by the commissioner.

(7) The actual costs and expenses incurred by the commissioner for an examination of a registered alien insurer must be charged to and collected from the alien reinsurer.

(8) A registered alien reinsurer is included as a "class one" organization for the purposes of RCW 48.02.190. [1997 c 379 § 7.]

**Purpose—Intent—1997 c 379:** See note following RCW 48.12.156.

**48.12.168 Credit for reinsurance—Foreign ceding insurer.** (1) Unless credit for reinsurance or deduction from liability is prohibited under RCW 48.12.164, a foreign ceding insurer is allowed credit for reinsurance or deduction from liability to the extent credit has been allowed by the ceding insurer's state of domicile if:

(a) The state of domicile is accredited by the national association of insurance commissioners; or

(b) Credit or deduction from liability would be allowed under chapter 379, Laws of 1997 if the foreign ceding insurer were domiciled in this state.

(2) Notwithstanding subsection (1) of this section, credit for reinsurance or deduction from liability may be disallowed upon a finding by the commissioner that either the condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state. [1997 c 379 § 8.]

**Purpose—Intent—1997 c 379:** See note following RCW 48.12.156.

## Chapter 48.13 INVESTMENTS

### Sections

48.13.285 Derivative transactions—Restrictions—Definitions—Rules.

**48.13.285 Derivative transactions—Restrictions—Definitions—Rules.** (1) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined by rule by the insurance commissioner;

(b) Derivative instruments shall not be used for speculative purposes, but only as stated in (a) of this subsection;

(c) An insurer shall be able to demonstrate to the insurance commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analysis;

(d) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(i) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent of its admitted assets;

(ii) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent of its admitted assets; and

(iii) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent of its admitted assets;

(e) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent of its admitted assets:

(i) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(ii) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Sales of covered puts on investments that the insurer is permitted to acquire under this chapter, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(iv) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding;

(f) An insurer shall include all counterparty exposure amounts in determining compliance with general diversification requirements and medium and low grade investment limitations under this chapter; and

(g) Pursuant to rules adopted by the insurance commissioner under subsection (3) of this section, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limitations in (d) of this subsection or for other risk management purposes under rules adopted by the commissioner, but replication transactions shall not be permitted for other than risk management purposes.

(2) For purposes of this section:

(a) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price;

(b) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor;

(c) "Counterparty exposure amount" means the net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse. The amount of the credit

risk equals the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer, or zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or, if not within the United States, within a foreign jurisdiction listed in the purposes and procedures of the securities valuation office as eligible for netting, the net amount of credit risk shall be the greater of zero or the sum of:

(i) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(ii) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties;

(d) "Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap or floor it has written, or has set aside under a custodial or escrow agreement cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction;

(e) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof and any agreements, options, or instruments permitted under rules adopted by the commissioner under subsection (3) of this section;

(f) "Derivative transaction" means a transaction involving the use of one or more derivative instruments;

(g) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests;

(h) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take

delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests;

(i) "Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring;

(j) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, or terminate or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests;

(k) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests;

(l) "Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments; and

(m) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

(3) The insurance commissioner may adopt rules implementing the provisions of this section. [1997 c 317 § 1.]

## Chapter 48.14 FEES AND TAXES

### Sections

48.14.0201 Premiums and prepayments tax—Health care services.

**48.14.0201 Premiums and prepayments tax—Health care services.** (1) As used in this section, "taxpayer" means a health maintenance organization, as defined in RCW 48.46.020, or a health care service contractor, as defined in RCW 48.44.010.

(2) Each taxpayer shall pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax shall be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation

that would have been due had the tax been in effect during the previous calendar year. The tax prepayments shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

(a) On or before June 15, forty-five percent;

(b) On or before September 15, twenty-five percent;

(c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund through March 31, 1996, and in the health services account under RCW 43.72.900 after March 31, 1996.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020. [1997 c 154 § 1; 1993 sp.s. c 25 § 601; 1993 c 492 § 301.]

**Effective date—1997 c 154:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 154 § 2.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

## Chapter 48.15 UNAUTHORIZED INSURERS

### Sections

48.15.090 Solvent insurer required. (*Effective June 1, 1998.*)

**48.15.090 Solvent insurer required. (*Effective June 1, 1998.*)** (1) A surplus line broker shall not knowingly place surplus line insurance with insurers unsound financially. The surplus line broker shall ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The surplus line broker shall not so insure with:

(a) Any foreign insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds, of which not less than one million five hundred thousand dollars is capital; or

(b) Any alien insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds. By January 1, 1992, this requirement shall be increased to twelve million five hundred thousand dollars. By January 1, 1993, this requirement shall be further increased to fifteen million dollars.



Such alien insurers must have in force in the United States an irrevocable trust fund, in a qualified United States financial institution, on behalf of United States policyholders of not less than five million four hundred thousand dollars and consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state.

There must be on file with the commissioner a copy of the trust, certified by the trustee, evidencing a subsisting trust fund deposit having an expiration date which at no time shall be less than five years after the date of creation of the trust. Such trust fund shall be included in the calculation of the insurer's capital and surplus or its equivalents; or

(c) Any group including incorporated and individual insurers maintaining a trust fund of less than fifty million dollars as security to the full amount thereof for all policyholders in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in (b) of this subsection for an alien insurer; or

(d) Any insurance exchange created by the laws of an individual state, maintaining capital and surplus, or substantially equivalent capital funds of less than fifty million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than six million dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of (a) of this subsection.

(2) The commissioner may, by rule:

(a) Increase the financial requirements under subsection (1) of this section by not more than one million dollars in any twelve-month period, but in no case may the requirements exceed fifteen million dollars; or

(b) Prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(3) For any violation of this section the surplus line broker may be fined not less than one hundred dollars or more than five thousand dollars, and in addition to or in lieu thereof the surplus line broker's license may be revoked, suspended, or nonrenewed. [1997 c 89 § 1; 1994 c 86 § 2; 1991 sp.s. c 5 § 2; 1980 c 102 § 4; 1975 1st ex.s. c 266 § 6; 1969 ex.s. c 241 § 10; 1955 c 303 § 5; 1947 c 79 § .15.09; Rem. Supp. 1947 § 45.15.09.]

**Effective date—1997 c 89:** "This act takes effect June 1, 1998." [1997 c 89 § 2.]

**Effective date—1994 c 86:** See note following RCW 48.12.160.

**Effective date—1991 sp.s. c 5:** See note following RCW 48.05.340.

**Severability—1975 1st ex.s. c 266:** See note following RCW 48.01.010.

## Chapter 48.17

### AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS

#### Sections

48.17.535 License or certificate suspension—Noncompliance with support order—Reissuance.

**48.17.535 License or certificate suspension—Noncompliance with support order—Reissuance.** The commissioner shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the commissioner's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 857.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 48.18

### THE INSURANCE CONTRACT

#### Sections

48.18.100 Forms of policies—Filing, certification, and approval.  
48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.  
48.18.290 Cancellation by insurer.

**48.18.100 Forms of policies—Filing, certification, and approval.** (1) No insurance policy form other than surety bond forms, forms exempt under RCW 48.18.103, or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form shall be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section shall not apply to policies, riders or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by such insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This

subsection shall not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section shall be made not less than thirty days in advance of any such issuance, delivery, or use. At the expiration of such thirty days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial thirty-day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may withdraw any such approval at any time for cause. By approval of any such form for immediate use, the commissioner may waive any unexpired portion of such initial thirty-day waiting period.

(4) The commissioner's order disapproving any such form or withdrawing a previous approval shall state the grounds therefor.

(5) No such form shall knowingly be so issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by order, exempt from the requirements of this section for so long as he or she deems proper, any insurance document or form or type thereof as specified in such order, to which in his or her opinion this section may not practicably be applied, or the filing and approval of which are, in his or her opinion, not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization shall adhere to the form filings made on its behalf by the organization. Deviations from such organization are permitted only when filed with the commissioner in accordance with this chapter. [1997 c 428 § 3; 1989 c 25 § 1; 1982 c 181 § 16; 1947 c 79 § .18.10; Rem. Supp. 1947 § 45.18.10.]

**Effective date—1989 c 25:** "This act shall take effect on September 1, 1989." [1989 c 25 § 10.]

**Severability—1982 c 181:** See note following RCW 48.03.010.

*Format of disability policies: RCW 48.20.012.*

**48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.** (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms. All commercial property casualty forms shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing,

specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a policy form under subsection (3) of this section, the insurer shall amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, or occupation for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof shall be on the commissioner. [1997 c 428 § 1.]

**48.18.290 Cancellation by insurer.** (1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) Written notice of such cancellation, accompanied by the actual reason therefor, must be actually delivered or mailed to the named insured not less than forty-five days prior to the effective date of the cancellation except for cancellation of insurance policies for nonpayment of premiums, which notice shall be not less than ten days prior to such date and except for cancellation of fire insurance policies under chapter 48.53 RCW, which notice shall not be less than five days prior to such date;

(b) Like notice must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder. For purposes of this subsection (1)(b), "delivered" includes electronic transmittal, facsimile, or personal delivery.

(2) The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto

as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than forty-five days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made by cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid, or to contracts of insurance procured under the provisions of chapter 48.15 RCW. [1997 c 85 § 1; 1988 c 249 § 2; 1986 c 287 § 1; 1985 c 264 § 17; 1982 c 110 § 7; 1980 c 102 § 7; 1979 ex.s. c 199 § 5; 1975-'76 2nd ex.s. c 119 § 2; 1947 c 79 § .18.29; Rem. Supp. 1947 § 45.18.29.]

**Effective date—1988 c 249:** See note following RCW 48.18.289.

**Application—1985 c 264 §§ 17-22:** "Sections 17 through 22 of this act apply to all new or renewal policies issued or renewed after May 10, 1985. Sections 17 through 22 of this act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to May 10, 1985. Sections 17 through 22 of this act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within forty-five days after May 10, 1985. Sections 17 through 22 of this act shall not be construed to require notice, other than that already required, of intention not to renew any policy which expires less than forty-five days after May 10, 1985." [1985 c 264 § 24.]

## Chapter 48.19 RATES

### Sections

- 48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.  
48.19.060 Filings—Review, waiting period, disapproval.

**48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.** (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, or occupation for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof shall be on the commissioner. [1997 c 428 § 2.]

**48.19.060 Filings—Review, waiting period, disapproval.** (1) The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070 and 48.19.043:

(a) No such filing shall become effective within thirty days after the date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he or she gives notice within such waiting period to the insurer or rating organization which made the filing that he or she needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or part thereof as to a filing that he or she has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof. [1997 c 428 § 4; 1989 c 25 § 5; 1947 c 79 § .19.06; Rem. Supp. 1947 § 45.19.06.]

**Effective date—1989 c 25:** See note following RCW 48.18.100.

## Chapter 48.20 DISABILITY INSURANCE

### Sections

- 48.20.028 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions.  
48.20.391 Diabetes coverage. (*Effective January 1, 1998.*)

**48.20.028 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions.**

(1)(a) An insurer offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health benefits that are required to be delivered to an individual enrolled in the basic health plan subject to RCW 48.43.025 and 48.43.035. Nothing in this subsection shall preclude an insurer from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. An insurer offering a health benefit plan that does not include benefits provided in the basic health plan shall

clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.20.390, 48.20.393, 48.20.395, 48.20.397, 48.20.410, 48.20.411, 48.20.412, 48.20.416, and 48.20.420 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premiums for health benefit plans for individuals shall be calculated using the adjusted community rating method that spreads financial risk across the carrier's entire individual product population. All such rates shall conform to the following:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(4) As used in this section, "health benefit plan," "basic health plan," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [1997 c 231 § 207; 1995 c 265 § 13.]

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**48.20.391 Diabetes coverage. (Effective January 1, 1998.)** The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, noninsulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All disability insurance contracts providing health care services, delivered or issued for delivery in this state and issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For disability insurance contracts that include pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all disability insurance contracts providing health care services, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the insurer from restricting patients to seeing only health care providers who have signed participating provider agreements with the insurer or an insuring entity under contract with the insurer.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The insurer need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plan that provides benefits identical to the schedule of services covered by the basic health plan, as required by RCW 48.20.028. [1997 c 276 § 2.]

**Sunset Act application:** See note following RCW 41.05.185.

**Effective date—1997 c 276:** See note following RCW 41.05.185.

## Chapter 48.21

### GROUP AND BLANKET DISABILITY INSURANCE

#### Sections

48.21.143 Diabetes coverage. (Effective January 1, 1998.)

**48.21.143 Diabetes coverage.** (Effective January 1, 1998.) The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, noninsulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health care services, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For group disability insurance contracts and blanket disability insurance contracts that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all group disability insurance contracts and blanket disability insurance contracts providing health care services, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training

and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the insurer from restricting patients to seeing only health care providers who have signed participating provider agreements with the insurer or an insuring entity under contract with the insurer.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The insurer need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plan that provides benefits identical to the schedule of services covered by the basic health plan, as required by RCW 48.21.045. [1997 c 276 § 3.]

**Sunset Act application:** See note following RCW 41.05.185.

**Effective date—1997 c 276:** See note following RCW 41.05.185.

## Chapter 48.22

### CASUALTY INSURANCE

#### Sections

48.22.070 Longshoreman's and harbor worker's compensation coverage—Rules—Plan creation.

48.22.140 Driver's license suspension for nonpayment of child support—Exclusion of unlicensed driver from insurance coverage not applicable—Notation in driving record.

**48.22.070 Longshoreman's and harbor worker's compensation coverage—Rules—Plan creation.** (1) The commissioner shall adopt rules establishing a reasonable plan to insure that workers' compensation coverage as required by the United States longshore and harbor workers' compensation act, 33 U.S.C. Secs. 901 through 950, and maritime employer's liability coverage incidental to the workers' compensation coverage is available to those unable to purchase it through the normal insurance market. This plan shall require the participation of all authorized insurers writing primary or excess United States longshore and harbor workers' compensation insurance in the state of Washington and the Washington state industrial insurance fund as defined in RCW 51.08.175 which is authorized to participate in the plan and to make payments in support of the plan in accordance with this section. Any underwriting losses or surpluses incurred by the plan shall be determined by the governing committee of the plan and shall be shared by plan participants in accordance with the following ratios: The state industrial insurance fund, fifty percent; and authorized insurers writing primary or excess United States longshore and harbor workers' compensation insurance, fifty percent.

(2) The Washington state industrial insurance fund may obtain or provide reinsurance coverage for the plan created under subsection (1) of this section the terms of which shall be negotiated between the state fund and the plan. This coverage shall not be obtained or provided if the commissioner determines that the premium to be charged would result in unaffordable rates for coverage provided by the plan. In considering whether excess of loss coverage premiums would result in unaffordable rates for workers' compensation coverage provided by the plan, the commissioner shall compare the resulting plan rates to those provided under any similar pool or plan of other states.

(3) An applicant for plan insurance, a person insured under the plan, or an insurer, affected by a ruling or decision of the manager or committee designated to operate the plan may appeal to the commissioner for resolution of a dispute. In adopting rules under this section, the commissioner shall require that the plan use generally accepted actuarial principles for rate making. [1997 c 110 § 1; 1993 c 177 § 1; 1992 c 209 § 2.]

**Effective date—1997 c 110:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 110 § 3.]

**Effective date—1993 c 177:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 177 § 4.]

**Finding—Declaration—1992 c 209:** "The legislature finds and declares that the continued existence of a strong and healthy maritime industry in this state is threatened by the unavailability and excessive cost of workers' compensation coverage required by the United States longshoreman's and harbor worker's compensation act. The legislature, therefore, acting under its authority to protect industry and employment in this state hereby establishes a commission to devise and implement both a near and long-term solution to this problem, for the purpose of maintaining employment for Washington workers and a vigorous maritime industry." [1992 c 209 § 1.]

**48.22.140 Driver's license suspension for nonpayment of child support—Exclusion of unlicensed driver from insurance coverage not applicable—Notation in driving record.** In the event that the department of licensing suspends a driver's license solely for the nonpayment of child support as provided in chapter 74.20A RCW or for noncompliance with a residential or visitation order as provided in \*chapter 26.09 RCW, any provision in the driver's motor vehicle liability insurance policy excluding insurance coverage for an unlicensed driver shall not apply to the driver for ninety days from the date of suspension. When a driver's license is suspended under chapter 74.20A RCW, the driving record for the suspended driver shall include a notation that explains the reason for the suspension. [1997 c 58 § 808.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 48.23A

### LIFE INSURANCE POLICY ILLUSTRATIONS

#### Sections

- 48.23A.005 Purpose—Standards for life insurance policy illustrations. (*Effective January 1, 1998.*)
- 48.23A.010 Scope of chapter—Exceptions. (*Effective January 1, 1998.*)
- 48.23A.015 Definitions. (*Effective January 1, 1998.*)
- 48.23A.020 Marketing with or without an illustration—Notice to commissioner—Conditions—Availability. (*Effective January 1, 1998.*)
- 48.23A.030 Illustration used in sale—Label—Required basic information—Prohibitions—Use of interest rate. (*Effective January 1, 1998.*)
- 48.23A.040 Basic illustration—Conforming requirements—Brief descriptions—Numeric summaries—Required statements. (*Effective January 1, 1998.*)
- 48.23A.050 Supplemental illustration—Conditions for use—Reference to basic illustration. (*Effective January 1, 1998.*)
- 48.23A.060 Illustration used or not used during sale—Signed copy of illustration or acknowledgment of no use—Computer screen—Retained copies. (*Effective January 1, 1998.*)
- 48.23A.070 Policy designated for use of illustrations—Annual report—Required information—In-force illustrations—Notice of adverse changes. (*Effective January 1, 1998.*)
- 48.23A.080 Illustration actuaries—Conditions for appointment—Duties—Certifications—Disclosures to commissioner. (*Effective January 1, 1998.*)
- 48.23A.090 Violations—RCW 48.30.010(1). (*Effective January 1, 1998.*)
- 48.23A.900 Severability—1997 c 313.
- 48.23A.901 Effective date—Application—1997 c 313.

**48.23A.005 Purpose—Standards for life insurance policy illustrations.** (*Effective January 1, 1998.*) The purpose of this chapter is to provide standards for life insurance policy illustrations that will protect consumers and foster consumer education by providing illustration formats, prescribing standards to be followed when illustrations are used, and specifying the disclosures that are required in connection with illustrations. The goals of these standards are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveates and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed. [1997 c 313 § 1.]

**48.23A.010 Scope of chapter—Exceptions.** (*Effective January 1, 1998.*) This chapter applies to all group and individual life insurance policies and certificates except:

- (1) Variable life insurance;
- (2) Individual and group annuity contracts;
- (3) Credit life insurance; or
- (4) Life insurance policies with no illustrated death benefits on any individual exceeding ten thousand dollars. [1997 c 313 § 2.]

**48.23A.015 Definitions.** (*Effective January 1, 1998.*) The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Actuarial standards board" means the board established by the American academy of actuaries to develop and adopt standards of actuarial practice.

(2) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(3) "Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five days.

(4) "Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the actuarial standards board may be relied upon if the standards:

(a) Are consistent with all provisions of this chapter;

(b) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;

(c) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and

(d) Do not permit assumed expenses to be less than minimum assumed expenses.

(5) "Generic name" means a short title descriptive of the policy being illustrated, such as whole life, term life, or flexible premium adjustable life.

(6) "Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are guaranteed and determined at issue.

(7) "Nonguaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(8) "Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(a) The disciplined current scale; or

(b) The currently payable scale.

(9) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

(a) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

(b) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this chapter, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

(c) "In-force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

(10) "Illustration actuary" means an actuary meeting the requirements of RCW 48.23A.080 who certifies to illustra-

tions based on the standard of practice adopted by the actuarial standards board.

(11) "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting, as defined in this section, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and one hundred percent policy persistency thereafter.

(a) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

(i) Fully allocated expenses;

(ii) Marginal expenses; and

(iii) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the national association of insurance commissioners.

(b) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(12) "Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(a) Every plan of coverage was selected by the employer or other group representative;

(b) Some portion of the premium is paid by the group or through payroll deduction; and

(c) Group underwriting or simplified underwriting is used.

(13) "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

(14) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

(15) "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election. [1997 c 313 § 3.]

**48.23A.020 Marketing with or without an illustration—Notice to commissioner—Conditions—Availability.** (*Effective January 1, 1998.*) (1) Each insurer marketing policies to which this chapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on January 1, 1998, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after January 1, 1998, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.



(2) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this chapter is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(4) Potential enrollees of nonterm group life subject to this chapter shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation is not considered an illustration for purposes of this chapter, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it. [1997 c 313 § 4.]

**48.23A.030 Illustration used in sale—Label—Required basic information—Prohibitions—Use of interest rate.** (*Effective January 1, 1998.*) (1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this chapter, be clearly labeled "life insurance illustration," and contain the following basic information:

- (a) Name of insurer;
- (b) Name and business address of producer or insurer's authorized representative, if any;
- (c) Name, age, and sex of proposed insured, except where a composite illustration is permitted under this chapter;
- (d) Underwriting or rating classification upon which the illustration is based;
- (e) Generic name of policy, the company product name, if different, and form number;
- (f) Initial death benefit; and
- (g) Dividend option election or application of nonguaranteed elements, if applicable.

(2) When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

- (a) Represent the policy as anything other than life insurance policy;
- (b) Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- (c) State or imply that the payment or amount of nonguaranteed elements is guaranteed;

(d) Use an illustration that does not comply with the requirements of this chapter;

(e) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

(f) Provide an applicant with an incomplete illustration;

(g) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

(h) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;

(i) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or

(j) Use an illustration that is not "self-supporting."

(3) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale. [1997 c 313 § 5.]

**48.23A.040 Basic illustration—Conforming requirements—Brief descriptions—Numeric summaries—Required statements.** (*Effective January 1, 1998.*) (1) A basic illustration shall conform with the following requirements:

(a) The illustration shall be labeled with the date on which it was prepared.

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (for example, the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").

(c) The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.

(d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

(e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

(f) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

(g) If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

(h) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (for example, "see page one for guaranteed elements").

(i) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in



the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(j) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable.

(k) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(l) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

(i) The benefits and values are not guaranteed;

(ii) The assumptions on which they are based are subject to change by the insurer; and

(iii) Actual results may be more or less favorable.

(m) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(n) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(2) A basic illustration shall include the following:

(a) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the internal revenue code;

(c) A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) Identification and a brief definition of column headings and key terms used in the illustration; and

(e) A statement containing in substance the following: "This illustration assumes that the currently illustrated, nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(3)(a) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, ten, and twenty and at age seventy, if applicable, on the three bases shown below. For multiple

life policies the summary shall show policy years five, ten, twenty, and thirty.

(i) Policy guarantees;

(ii) Insurer's illustrated scale;

(iii) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

(A) Dividends at fifty percent of the dividends contained in the illustrated scale used;

(B) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(C) All nonguaranteed charges, including but not limited to, term insurance charges and mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(b) In addition, if coverage would cease prior to policy maturity or age one hundred, the year in which coverage ceases shall be identified for each of the three bases.

(4) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this chapter.

(a) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(b) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(5)(a) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(i) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(ii) The corresponding guaranteed death benefit, as provided in the policy; and

(iii) The corresponding guaranteed value available upon surrender, as provided in the policy.

(b) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(c) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column. [1997 c 313 § 6.]

**48.23A.050 Supplemental illustration—Conditions for use—Reference to basic illustration.** (*Effective January 1, 1998.*) (1) A supplemental illustration may be provided so long as:

- (a) It is appended to, accompanied by, or preceded by a basic illustration that complies with this chapter;
  - (b) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
  - (c) It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and
  - (d) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.
- (2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information. [1997 c 313 § 7.]

**48.23A.060 Illustration used or not used during sale—Signed copy of illustration or acknowledgment of no use—Computer screen—Retained copies.** (*Effective January 1, 1998.*) (1)(a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this chapter, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this chapter, be labeled "revised illustration," and be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(2)(a) If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy, or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(b) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3)(a) Where a computer screen illustration is used that cannot be printed out during use, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require

the producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guaranteed and nonguaranteed interest rates illustrated, the number of policy years illustrated, the initial death benefit, the premium amount illustrated, and the assumed number of years of premiums. On the same form the applicant shall acknowledge that an illustration matching that which was displayed on the computer screen will be provided no later than the time of policy delivery. A copy of this signed form shall be provided to the applicant at the time it is signed.

(b) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner and retained by the insurer.

(c) If a computer screen illustration is used that can be printed during use, a copy of that illustration, signed in accordance with this chapter, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

(d) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection is satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed numeric summary page.

(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued. [1997 c 313 § 8.]

**48.23A.070 Policy designated for use of illustrations—Annual report—Required information—In-force illustrations—Notice of adverse changes.** (*Effective January 1, 1998.*) (1) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

(a) For universal life policies, the report shall include the following:

(i) The beginning and end date of the current report period;

(ii) The policy value at the end of the previous report period and at the end of the current report period;

(iii) The total amounts that have been credited or debited to the policy value during the current report period, identifying each type, such as interest, mortality, expense, and riders;

(iv) The current death benefit at the end of the current report period on each life covered by the policy;

(v) The net cash surrender value of the policy as of the end of the current report period;

(vi) The amount of outstanding loans, if any, as of the end of the current report period; and

(vii) For fixed premium policies: If, assuming guaranteed interest, mortality, and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(viii) For flexible premium policies: If, assuming guaranteed interest, mortality, and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(b) For all other policies, where applicable:

(i) Current death benefit;

(ii) Annual contract premium;

(iii) Current cash surrender value;

(iv) Current dividend;

(v) Application of current dividend; and

(vi) Amount of outstanding loan.

(c) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(2) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

(3) Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of RCW 48.23A.030 (1) and (2) and 48.23A.040 (1) and (5). No signature or other acknowledgment of receipt of this illustration shall be required.

(4) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed. [1997 c 313 § 9.]

**48.23A.080 Illustration actuaries—Conditions for appointment—Duties—Certifications—Disclosures to commissioner.** (*Effective January 1, 1998.*) (1) The board

of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the national association of insurance commissioners model regulation on life insurance illustrations adopted by the actuarial standards board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this chapter.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American academy of actuaries;

(b) Be familiar with the standard of practice regarding life insurance policy illustrations;

(c) Not have been found by the commissioner, following appropriate notice and hearing to have:

(i) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(ii) Been found guilty of fraudulent or dishonest practices;

(iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(iv) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(d) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under (c) of this subsection;

(e) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and

(f) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(i) Fully allocated expenses;

(ii) Marginal expenses; or

(iii) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the national association of insurance commissioners.

(4)(a) The illustration actuary shall file a certification with the board of directors and with the commissioner:

(i) Annually for all policy forms for which illustrations are used; and

(ii) Before a new policy form is illustrated.

(b) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of this chapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(b) That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (3)(f) of this section.

(7) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change. [1997 c 313 § 10.]

**48.23A.090 Violations—RCW 48.30.010(1).** (*Effective January 1, 1998.*) In addition to any other penalties provided by law, an insurer or producer that violates a requirement of this chapter is guilty of a violation of RCW 48.30.010(1). [1997 c 313 § 11.]

**48.23A.900 Severability—1997 c 313.** 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. [1997 c 313 § 12.]

**48.23A.901 Effective date—Application—1997 c 313.** This act takes effect January 1, 1998, and applies to policies sold on or after January 1, 1998. [1997 c 313 § 13.]

## Chapter 48.29 TITLE INSURERS

### Sections

48.29.010 Scope of chapter—Definitions.

**48.29.010 Scope of chapter—Definitions.** (1) This chapter relates only to title insurers.

(2) None of the provisions of this code shall be deemed to apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to the correctness thereof so long as such persons do not guarantee or insure such titles.

(3) For purposes of this chapter, unless the context clearly requires otherwise:

(a) "Title policy" means any written instrument, contract, or guarantee by means of which title insurance liability is assumed.

(b) "Abstract of title" means a written representation, provided pursuant to contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of such representation, listing all recorded conveyances, instruments, or documents which, under the

laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described. An abstract of title is not a title policy as defined in this subsection.

(c) "Preliminary report," "commitment," or "binder" means reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports, the conditions and stipulations of the report and the issued policy, and such other matters as may be incorporated by reference. The reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. Any such report shall not be construed as, nor constitute, a representation as to the condition of the title to real property, but shall constitute a statement of terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted. [1997 c 14 § 1; 1947 c 79 § .29.01; Rem. Supp. 1947 § 45.29.01.]

## Chapter 48.30

### UNFAIR PRACTICES AND FRAUDS

#### Sections

48.30.010 Unfair practices in general—Remedies and penalties.

**48.30.010 Unfair practices in general—Remedies and penalties.** (1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation. [1997 c 409 § 107; 1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**Severability—1973 1st ex.s. c 152:** See note following RCW 48.05.140.

### Chapter 48.30A INSURANCE FRAUD

#### Sections

48.30A.045 Insurance antifraud plan—File plan and changes with commissioner—Exemptions.

**48.30A.045 Insurance antifraud plan—File plan and changes with commissioner—Exemptions.** (1) Each insurer licensed to write direct insurance in this state, except those exempted in subsection (2) of this section, shall institute and maintain an insurance antifraud plan. An insurer licensed on July 1, 1995, shall file its antifraud plan with the insurance commissioner no later than December 31, 1995. An insurer licensed after July 1, 1995, shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified.

(2) This section does not apply to health carriers, as defined in RCW 48.43.005, life insurers, or title insurers; or property or casualty insurers with annual gross written medical malpractice insurance premiums in this state that exceed fifty percent of their total annual gross written premiums in this state; or all credit-related insurance written in connection with a credit transaction in which the creditor is named as a beneficiary or loss payee under the policy except vendor single-interest or collateral protection coverage as defined in RCW 48.22.110(4). [1997 c 92 § 1; 1995 c 285 § 9.]

### Chapter 48.32 WASHINGTON INSURANCE GUARANTY ASSOCIATION ACT

#### Sections

48.32.145 Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c).

**48.32.145 Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c).** Every member insurer that prior to April 1, 1993, or after July 27, 1997, shall have paid one or more assessments levied pursuant to RCW 48.32.060(1)(c) shall be entitled to take a credit against any premium tax falling due under RCW 48.14.020. The amount of the credit shall be one-fifth of the aggregate amount of such aggregate assessments paid during such calendar year for each of the five consecutive calendar years beginning with the calendar year following the calendar year in which such assessments are paid. Whenever the allowable credit is or becomes less than one thousand dollars, the entire amount of the credit may be offset against the premium tax at the next time the premium tax is paid. [1997 c 300 § 1; 1993 sp.s. c 25 § 901; 1977 ex.s. c 183 § 1; 1975-'76 2nd ex.s. c 109 § 11.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

### Chapter 48.32A WASHINGTON LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

#### Sections

48.32A.090 Certificates of contribution—Allowance as asset—Offset against premium taxes.

**48.32A.090 Certificates of contribution—Allowance as asset—Offset against premium taxes.** (1) The association shall issue to each insurer paying an assessment under this chapter certificates of contribution, in appropriate form and terms as prescribed or approved by the commissioner, for the amounts so paid into the respective funds. All outstanding certificates against a particular fund shall be of equal dignity and priority without reference to amounts or dates of issue.

(2) An outstanding certificate of contribution issued for an assessment paid prior to April 1, 1993, or issued for an assessment paid for an insolvent insurer for which the order of liquidation was entered after July 27, 1997, shall be shown by the insurer in its financial statements as an admitted asset for such amount and period of time as the commissioner may approve. Unless a longer period has been allowed by the commissioner the insurer shall in any event at its option have the right to so show a certificate of contribution as an admitted asset at percentages of original face amount for calendar years as follows:

- 100% for the calendar year of issuance;
- 80% for the first calendar year after the year of issuance;
- 60% for the second calendar year after the year of issuance;
- 40% for the third calendar year after the year of issuance;
- 20% for the fourth calendar year after the year of issuance; and

0% for the fifth and subsequent calendar years after the year of issuance.

Notwithstanding the foregoing, if the value of a certificate of contribution is or becomes less than one thousand dollars, the entire amount may be written off by the insurer in that year.

(3) The insurer shall offset the amount written off by it in a calendar year under subsection (2) of this section against its premium tax liability to this state accrued with respect to business transacted in such year.

(4) Any sums recovered by the association representing sums which have theretofore been written off by contributing insurers and offset against premium taxes as provided in subsection (3) of this section, shall be paid by the association to the commissioner and then deposited with the state treasurer for credit to the general fund of the state of Washington.

(5) No distribution to stockholders, if any, of a liquidating insurer shall be made unless and until the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association. [1997 c 300 § 2; 1993 sp.s. c 25 § 902; 1990 c 51 § 6; 1977 ex.s. c 183 § 2; 1975 1st ex.s. c 133 § 1; 1971 ex.s. c 259 § 9.]

**Severability—Effective dates—Part headings, captions not law—**1993 sp.s. c 25: See notes following RCW 82.04.230.

## Chapter 48.41

### HEALTH INSURANCE COVERAGE ACCESS ACT

#### Sections

|           |   |
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| 48.41.030 | Definitions.  |
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**48.41.030 Definitions.** As used in this chapter, the following terms have the meaning indicated, unless the context requires otherwise:

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

(4) "Commissioner" means the insurance commissioner.

(5) "Covered person" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.

(6) "Health care facility" has the same meaning as in RCW 70.38.025.

(7) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

(8) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(9) "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, civilian health and medical program for the uniform services (CHAMPUS), 10 U.S.C. 55, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(10) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health coverage" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health coverage" in subsection (9) of this section.

(11) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

(12) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

(13) "Member" means any commercial insurer which provides disability insurance, any health care service contractor, and any health maintenance organization licensed under Title 48 RCW. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" set forth in subsection (9) of this section.

(14) "Network provider" means a health care provider who has contracted in writing with the pool administrator to accept payment from and to look solely to the pool according to the terms of the pool health plans.

(15) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(16) "Point of service plan" means a benefit plan offered by the pool under which a covered person may elect to receive covered services from network providers, or nonnetwork providers at a reduced rate of benefits.

(17) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040.

(18) "Substantially equivalent health plan" means a "health plan" as defined in subsection (10) of this section which, in the judgment of the board or the administrator, offers persons including dependents or spouses covered or making application to be covered by this pool an overall level of benefits deemed approximately equivalent to the minimum benefits available under this pool. [1997 c 337 § 6; 1997 c 231 § 210; 1989 c 121 § 1; 1987 c 431 § 3.]

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**48.41.060 Board powers.** The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board may:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(2) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(3) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, agent referral fees, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state small group plan rating requirements under RCW 48.44.023 and 48.46.066;

(4) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year;

(5) Issue policies of health coverage in accordance with the requirements of this chapter;

(6) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(7) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the

board shall cause the pool to have an annual audit of its operations by an independent certified public accountant. [1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**Report on implementation of 1987 c 431:** "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of \*this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

**\*Reviser's note:** This act [1987 c 431] consisted of chapter 48.41 RCW and RCW 48.14.022 and 82.04.4329.

**48.41.080 Pool administrator—Selection, term, duties, pay.** The board shall select an administrator from the membership of the pool whether domiciled in this state or another state through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

(a) The administrator's proven ability to handle health coverage;

(b) The efficiency of the administrator's claim-paying procedures;

(c) An estimate of the total charges for administering the plan; and

(d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least three months prior to the end of the current three-year period.

(3) The administrator shall perform such duties as may be assigned by the board including:

(a) All eligibility and administrative claim payment functions relating to the pool;

(b) Establishing a premium billing procedure for collection of premiums from covered persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

(c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made;

(ii) Taking steps necessary to offer and administer managed care benefit plans; and

(iii) Evaluating the eligibility of each claim for payment by the pool;

(d) Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;

(e) Following the close of each accounting year, determination of net paid and earned premiums, the expense of administration, and the paid and incurred losses for the

year and reporting this information to the board and the commissioner on a form as prescribed by the commissioner.

(4) The administrator shall be paid as provided in the contract between the board and the administrator for its expenses incurred in the performance of its services. [1997 c 231 § 212; 1989 c 121 § 5; 1987 c 431 § 8.]

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**48.41.110 Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure.** (1) The pool is authorized to offer one or more managed care plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. Covered persons enrolled in the pool on January 1, 1997, may continue coverage under the pool plan in which they are enrolled on that date. However, the pool may incorporate managed care features into such existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of the pool policy in plain language. After approval by the board of directors, such brochure shall be made reasonably available to participants or potential participants. The health insurance policy issued by the pool shall pay only usual, customary, and reasonable charges for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of illnesses, injuries, and conditions which are not otherwise limited or excluded. Eligible expenses are the usual, customary, and reasonable charges for the health care services and items for which benefits are extended under the pool policy. Such benefits shall at minimum include, but not be limited to, the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, but limited to a total of one hundred eighty inpatient days in a calendar year, and limited to thirty days inpatient care for mental and nervous conditions, or alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) The first twenty outpatient professional visits for the diagnosis or treatment of one or more mental or nervous conditions or alcohol, drug, or chemical dependency or abuse rendered during a calendar year by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners, in the case of mental or nervous conditions, and rendered by a state certified chemical dependency program approved under chapter 70.96A RCW, in the case of alcohol, drug, or chemical dependency or abuse;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not more than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery limited to the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Maternity care services, as provided in the managed care plan to be designed by the pool board of directors, and for which no preexisting condition waiting periods may apply;

(o) Services of a physical therapist and services of a speech therapist;

(p) Hospice services;

(q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury; and

(r) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(3) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(4) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. The pool benefit policy cost shares and limitations must be consistent with those that are generally included in health plans approved by the insurance commissioner; however, no limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(5) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it may impose a three-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment, within three months before the effective date of coverage. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. [1997 c 231 § 213; 1987 c 431 § 11.]



Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

**48.41.130 Policy forms—Double coverage prohibited.** All policy forms issued by the pool shall conform in substance to prototype forms developed by the pool, and shall in all other respects conform to the requirements of this chapter, and shall be filed with and approved by the commissioner before they are issued. The pool shall not issue a pool policy to any individual who, on the effective date of the coverage applied for, already has or would have coverage substantially equivalent to a pool policy as an insured or covered dependent, or who would be eligible for such coverage if he or she elected to obtain it at a lesser premium rate. However, coverage provided by the basic health plan, as established pursuant to chapter 70.47 RCW, shall not be deemed substantially equivalent for the purposes of this section. [1997 c 231 § 215; 1987 c 431 § 13.]

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

**48.41.200 Rates—Standard risk and maximum.** The pool shall determine the standard risk rate by calculating the average group standard rate for groups comprised of up to fifty persons charged by the five largest members offering coverages in the state comparable to the pool coverage. In the event five members do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for such coverage. Maximum rates for pool coverage shall be one hundred fifty percent for the indemnity health plan and one hundred twenty-five percent for managed care plans of the rates established as applicable for group standard risks in groups comprised of up to fifty persons. [1997 c 231 § 214; 1987 c 431 § 20.]

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

## Chapter 48.42

### PERSONAL COVERAGE, GENERAL AUTHORITY

(Formerly: Health care coverage, general authority)

#### Sections

48.42.060 Recodified as RCW 48.47.005.  
48.42.070 Recodified as RCW 48.47.020.  
48.42.080 Recodified as RCW 48.47.030.

**48.42.060 Recodified as RCW 48.47.005.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**48.42.070 Recodified as RCW 48.47.020.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**48.42.080 Recodified as RCW 48.47.030.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 48.43

### INSURANCE REFORM

(Formerly: Certified health plans)

#### Sections

48.43.005 Definitions.  
48.43.045 Health plan requirements—Annual reports—Exemptions.  
48.43.093 Health carrier coverage of emergency medical services—Requirements—Conditions. (Effective January 1, 1998.)

**48.43.005 Definitions.** Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(d).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(5) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(6) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(7) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(8) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(9) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of chapter 265, Laws of 1995.

(10) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(11) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(12) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(13) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(14) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(15) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(16) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(17) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(18) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(19) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(20) "Open enrollment" means the annual sixty-two day period during the months of July and August during which every health carrier offering individual health plan coverage must accept onto individual coverage any state resident within the carrier's service area regardless of health condition who submits an application in accordance with RCW 48.43.035(1).

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(24) "Small employer" means any person, firm, corporation, partnership, association, political subdivision except school districts, or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona

vide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. The term "small employer" includes a self-employed individual or sole proprietor. The term "small employer" also includes a self-employed individual or sole proprietor who derives at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year.

(25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs. [1997 c 231 § 202; 1997 c 55 § 1; 1995 c 265 § 4.]

**Reviser's note:** This section was amended by 1997 c 55 § 1 and by 1997 c 231 § 202, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Short title—1997 c 231:** "This act shall be known as the consumer assistance and insurance market stabilization act." [1997 c 231 § 402.]

**Part headings and captions not law—1997 c 231:** "Part headings and section captions used in this act are not part of the law." [1997 c 231 § 403.]

**Severability—1997 c 231:** "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." [1997 c 231 § 404.]

**Effective dates—1997 c 231:** "(1) \*Sections 104 through 108 and 301 of this act take effect January 1, 1998.

(2) \*Section 111 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997.

(3) Section 205 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately." [1997 c 231 § 405.]

**\*Reviser's note:** Sections 104 through 108 and 111 of this act were vetoed by the governor.

**Effective date—1997 c 55:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 55 § 2.]

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**48.43.045 Health plan requirements—Annual reports—Exemptions.** Every health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 1996, shall:

(1) Permit every category of health care provider to provide health services or care for conditions included in the basic health plan services to the extent that:

(a) The provision of such health services or care is within the health care providers' permitted scope of practice; and

(b) The providers agree to abide by standards related to:

(i) Provision, utilization review, and cost containment of health services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious health services.

(2) Annually report the names and addresses of all officers, directors, or trustees of the health carrier during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals. This requirement does not apply to a foreign or alien insurer regulated under chapter 48.20 or 48.21 RCW that files a supplemental compensation exhibit in its annual statement as required by law. [1997 c 231 § 205; 1995 c 265 § 8.]

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**48.43.093 Health carrier coverage of emergency medical services—Requirements—Conditions.** (*Effective January 1, 1998.*) (1) When conducting a review of the necessity and appropriateness of emergency services or making a benefit determination for emergency services:

(a) A health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. In addition, a health carrier shall not require prior authorization of such services provided prior to the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a nonparticipating hospital emergency department, a health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson would have reasonably believed that use of a participating hospital emergency department would result in a delay that would worsen the emergency, or if a provision of federal, state, or local law requires the use of a specific provider or facility. In addition, a health carrier shall not require prior authorization of such services provided prior to the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed and that use of a participating hospital emergency department would result in a delay that would worsen the emergency.

(b) If an authorized representative of a health carrier authorizes coverage of emergency services, the health carrier shall not subsequently retract its authorization after the emergency services have been provided, or reduce payment for an item or service furnished in reliance on approval, unless the approval was based on a material misrepresenta-

tion about the covered person's health condition made by the provider of emergency services.

(c) Coverage of emergency services may be subject to applicable copayments, coinsurance, and deductibles, and a health carrier may impose reasonable differential cost-sharing arrangements for emergency services rendered by nonparticipating providers, if such differential between cost-sharing amounts applied to emergency services rendered by participating provider versus nonparticipating provider does not exceed fifty dollars. Differential cost sharing for emergency services may not be applied when a covered person presents to a nonparticipating hospital emergency department rather than a participating hospital emergency department when the health carrier requires preauthorization for postevaluation or poststabilization emergency services if:

(i) Due to circumstances beyond the covered person's control, the covered person was unable to go to a participating hospital emergency department in a timely fashion without serious impairment to the covered person's health; or

(ii) A prudent layperson possessing an average knowledge of health and medicine would have reasonably believed that he or she would be unable to go to a participating hospital emergency department in a timely fashion without serious impairment to the covered person's health.

(d) If a health carrier requires preauthorization for postevaluation or poststabilization services, the health carrier shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review. In order for postevaluation or poststabilization services to be covered by the health carrier, the provider or facility must make a documented good faith effort to contact the covered person's health carrier within thirty minutes of stabilization, if the covered person needs to be stabilized. The health carrier's authorized representative is required to respond to a telephone request for preauthorization from a provider or facility within thirty minutes. Failure of the health carrier to respond within thirty minutes constitutes authorization for the provision of immediately required medically necessary postevaluation and poststabilization services, unless the health carrier documents that it made a good faith effort but was unable to reach the provider or facility within thirty minutes after receiving the request.

(e) A health carrier shall immediately arrange for an alternative plan of treatment for the covered person if a nonparticipating emergency provider and health plan cannot reach an agreement on which services are necessary beyond those immediately necessary to stabilize the covered person consistent with state and federal laws.

(2) Nothing in this section is to be construed as prohibiting the health carrier from requiring notification within the time frame specified in the contract for inpatient admission or as soon thereafter as medically possible but no less than twenty-four hours. Nothing in this section is to be construed as preventing the health carrier from reserving the right to require transfer of a hospitalized covered person upon stabilization. Follow-up care that is a direct result of the emergency must be obtained in accordance with the health plan's usual terms and conditions of coverage. All other terms and conditions of coverage may be applied to emergency services. [1997 c 231 § 301.]

Short title—Part headings and captions not law—Severability—  
Effective dates—1997 c 231: See notes following RCW 48.43.005.

## Chapter 48.44

### HEALTH CARE SERVICES

#### Sections

- 48.44.022 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions.
- 48.44.035 Limited health care service—Uncovered expenditures—Minimum net worth requirements.
- 48.44.037 Minimum net worth—Requirement to maintain—Determination of amount.
- 48.44.039 Minimum net worth—Domestic or foreign health care service contractor.
- 48.44.095 Annual financial statement—Filings—Contents—Fee—Penalty for failure to file.
- 48.44.315 Diabetes coverage. (*Effective January 1, 1998.*)

#### **48.44.022 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions.**

(1)(a) A health care service contractor offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health benefits that are required to be delivered to an individual enrolled in the basic health plan, subject to the provisions in RCW 48.43.025 and 48.43.035. Nothing in this subsection shall preclude a contractor from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A contractor offering a health benefit plan that does not include benefits provided in the basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.340, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-

five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the family composition;

(ii) Changes to the health benefit plan requested by the individual; or

(iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(4) As used in this section and RCW 48.44.023 "health benefit plan," "small employer," "basic health plan," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005. [1997 c 231 § 208; 1995 c 265 § 15.]

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**48.44.035 Limited health care service—Uncovered expenditures—Minimum net worth requirements.** (1) For purposes of this section only, "limited health care service" means dental care services, vision care services, mental health services, chemical dependency services, pharmaceutical services, podiatric care services, and such other services as may be determined by the commissioner to be limited health services, but does not include hospital, medical, surgical, emergency, or out-of-area services except as those services are provided incidentally to the limited health services set forth in this subsection.

(2) For purposes of this section only, a "limited health care service contractor" means a health care service contractor that offers one and only one limited health care service.

(3) Except as provided in subsection (4) of this section, every limited health care service contractor must have and maintain a minimum net worth of three hundred thousand dollars.

(4) A limited health care service contractor registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (3) of this section must continue to have and maintain the minimum net worth required by subsection (3) of this section. A limited health care service contractor registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (3) of this section must have and maintain a minimum net worth of:

(a) Thirty-five percent of the amount required by subsection (3) of this section by December 31, 1997;

(b) Seventy percent of the amount required by subsection (3) of this section by December 31, 1998; and

(c) One hundred percent of the amount required by subsection (3) of this section by December 31, 1999.

(5) For all limited health care service contractors that have had a certificate of registration for less than three years, their uncovered expenditures shall be either insured or guaranteed by a foreign or domestic carrier admitted in the state of Washington or by another carrier acceptable to the commissioner. All such contractors shall also deposit with the commissioner one-half of one percent of their projected premium for the next year in cash, approved surety bond, securities, or other form acceptable to the commissioner.

(6) For all limited health care service contractors that have had a certificate of registration for three years or more, their uncovered expenditures shall be assured by depositing with the insurance commissioner twenty-five percent of their last year's uncovered expenditures as reported to the commissioner and adjusted to reflect any anticipated increases or decreases during the ensuing year plus an amount for unearned prepayments; in cash, approved surety bond, securities, or other form acceptable to the commissioner. Compliance with subsection (5) of this section shall also constitute compliance with this requirement.

(7) Limited health service contractors need not comply with RCW 48.44.030 or 48.44.037. [1997 c 212 § 1; 1990 c 120 § 3.]

**48.44.037 Minimum net worth—Requirement to maintain—Determination of amount.** (1) Except as provided in subsection (2) of this section, every health care service contractor must have and maintain a minimum net worth equal to the greater of:

(a) Three million dollars; or

(b) Two percent of the annual premium earned, as reported on the most recent annual financial statement filed with the commissioner, on the first one hundred fifty million dollars of premium and one percent of the annual premium on the premium in excess of one hundred fifty million dollars.

(2) A health care service contractor registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (1)

of this section must continue to have and maintain the minimum net worth required by subsection (1) of this section. A health care service contractor registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (1) of this section must have and maintain a minimum net worth of:

(a) The amount required immediately prior to July 27, 1997, until December 31, 1997;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1997;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1998; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1999.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health care service contractor shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of the claims.

Liabilities shall be computed in accordance with regulations adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the health care service contractor.

(5) All income from reserves on deposit with the commissioner shall belong to the depositing health care service contractor and shall be paid to it as it becomes available.

(6) Any funded reserve required by this chapter shall be considered an asset of the health care service contractor in determining the organization's net worth.

(7) A health care service contractor that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part thereof after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [1997 c 212 § 2; 1990 c 120 § 4.]

**48.44.039 Minimum net worth—Domestic or foreign health care service contractor.** (1) For purposes of this section:

(a) "Domestic health care service contractor" means a health care service contractor formed under the laws of this state; and

(b) "Foreign health care service contractor" means a health care service contractor formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(2) If the minimum net worth of a domestic health care service contractor falls below the minimum net worth required by this chapter, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the domestic health care service contractor to cure the deficiency within ninety days after that service of notice.

(3) If the deficiency is not cured, and proof thereof filed with the commissioner within the ninety-day period, the domestic health care service contractor shall be declared insolvent and shall be proceeded against as authorized by this code, or the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the registration of the domestic health care service contractor as being hazardous to its subscribers and the people in this state.

(4) If the deficiency is not cured the domestic health care service contractor shall not issue or deliver any individual or group contract after the expiration of the ninety-day period.

(5) If the minimum net worth of a foreign health care service contractor falls below the minimum net worth required by this chapter, the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the foreign health care service contractor's registration as being hazardous to its subscribers or the people in this state. [1997 c 212 § 3.]

**48.44.095 Annual financial statement—Filings—Contents—Fee—Penalty for failure to file.**

(1) Every health care service contractor shall annually, before the first day of March, file with the commissioner a statement verified by at least two of the principal officers of the health care service contractor showing its financial condition as of the last day of the preceding calendar year. The statement shall be in such form as is furnished or prescribed by the commissioner. The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(2) In addition to the requirements of subsection (1) of this section, every health care service contractor that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(3) Coincident with the filing of its annual statement and other schedules, each health care service contractor shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(4) Foreign health care service contractors that are domiciled in a state that has a law substantially similar to subsection (2) of this section are considered to be in compliance with this section.

(5) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(6) The commissioner may suspend or revoke the certificate of registration of any health care service contractor failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant. [1997 c 212 § 4; 1993 c 492 § 295; 1983 c 202 § 3; 1969 c 115 § 5.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**48.44.315 Diabetes coverage. (Effective January 1, 1998.)** The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, noninsulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All health benefit plans offered by health care service contractors, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For health benefit plans that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all health benefit plans, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes

outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the health care services contractor from restricting patients to seeing only health care providers who have signed participating provider agreements with the health care services contractor or an insuring entity under contract with the health care services contractor.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The health care service contractor need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plans that provide benefits identical to the schedule of services covered by the basic health plan, as required by RCW 48.44.022 and 48.44.023. [1997 c 276 § 4.]

**Sunset Act application:** See note following RCW 41.05.185.

**Effective date—1997 c 276:** See note following RCW 41.05.185.

## Chapter 48.46

### HEALTH MAINTENANCE ORGANIZATIONS

#### Sections

- 48.46.064 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions.
- 48.46.080 Annual statement—Filings—Contents—Fee—Penalty for failure to file—Accuracy required.
- 48.46.150 Repealed.
- 48.46.235 Minimum net worth—Requirement to maintain—Determination of amount.
- 48.46.237 Minimum net worth—Domestic or foreign health maintenance organization.
- 48.46.272 Diabetes coverage. (*Effective January 1, 1998.*)

#### **48.46.064 Mandatory offering to individuals providing basic health plan benefits—Exemption from statutory requirements—Premium rates—Definitions.**

(1)(a) A health maintenance organization offering any health benefit plan to any individual shall offer and actively market to all individuals a health benefit plan providing benefits identical to the schedule of covered health benefits that are required to be delivered to an individual enrolled in the basic health plan, subject to the provisions in RCW 48.43.025 and 48.43.035. Nothing in this subsection shall preclude a health maintenance organization from offering, or an individual from purchasing, other health benefit plans that may have more or less comprehensive benefits than the basic health plan, provided such plans are in accordance with this chapter. A health maintenance organization offering a health benefit plan that does not include benefits provided in the



basic health plan shall clearly disclose these differences to the individual in a brochure approved by the commissioner.

(b) A health benefit plan shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.290, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530 if the health benefit plan is the mandatory offering under (a) of this subsection that provides benefits identical to the basic health plan, to the extent these requirements differ from the basic health plan.

(2) Premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(3) Adjusted community rates established under this section shall pool the medical experience of all individuals

purchasing coverage, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(4) As used in this section and RCW 48.46.066, "health benefit plan," "basic health plan," "adjusted community rate," "small employer," and "wellness activities" mean the same as defined in RCW 48.43.005. [1997 c 231 § 209; 1995 c 265 § 17.]

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**48.46.080 Annual statement—Filings—Contents—Fee—Penalty for failure to file—Accuracy required.** (1) Every health maintenance organization shall annually, before the first day of March, file with the commissioner a statement verified by at least two of the principal officers of the health maintenance organization showing its financial condition as of the last day of the preceding calendar year.

(2) Such annual report shall be in such form as the commissioner shall prescribe and shall include:

(a) A financial statement of such organization, including its balance sheet and receipts and disbursements for the preceding year, which reflects at a minimum;

(i) All prepayments and other payments received for health care services rendered pursuant to health maintenance agreements;

(ii) Expenditures to all categories of health care facilities, providers, insurance companies, or hospital or medical service plan corporations with which such organization has contracted to fulfill obligations to enrolled participants arising out of its health maintenance agreements, together with all other direct expenses including depreciation, enrollment, and commission; and

(iii) Expenditures for capital improvements, or additions thereto, including but not limited to construction, renovation, or purchase of facilities and capital equipment;

(b) The number of participants enrolled and terminated during the report period. Every employer offering health care benefits to their employees through a group contract with a health maintenance organization shall furnish said health maintenance organization with a list of their employees enrolled under such plan;

(c) The number of doctors by type of practice who, under contract with or as an employee of the health maintenance organization, furnished health care services to consumers during the past year;

(d) A report of the names and addresses of all officers, directors, or trustees of the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals for services to such organization. For partnership and professional service corporations, a report shall be made for partners or shareholders as to any compensation or expense reimbursement received by them for services, other than for services and expenses relating directly for patient care;

(e) Such other information relating to the performance of the health maintenance organization or the health care facilities or providers with which it has contracted as reasonably necessary to the proper and effective administra-

tion of this chapter, in accordance with rules and regulations; and

(f) Disclosure of any financial interests held by officers and directors in any providers associated with the health maintenance organization or any provider of the health maintenance organization.

(3) The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(4) In addition to the requirements of subsections (1) and (2) of this section, every health maintenance organization that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(5) Coincident with the filing of its annual statement and other schedules, each health maintenance organization shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(6) Foreign health maintenance organizations that are domiciled in a state that has a law substantially similar to subsection (4) of this section are considered to be in compliance with this section.

(7) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(8) The commissioner may suspend or revoke the certificate of registration of any health maintenance organization failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant.

(9) No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health maintenance organization which does not accurately state the health maintenance organization's financial condition. [1997 c 212 § 5; 1993 c 492 § 296. Prior: 1983 c 202 § 10; 1983 c 106 § 6; 1975 1st ex.s. c 290 § 9.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**48.46.150 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**48.46.235 Minimum net worth—Requirement to maintain—Determination of amount.** (1) Except as provided in subsection (2) of this section, every health maintenance organization must have and maintain a minimum net worth equal to the greater of:

(a) Three million dollars; or

(b) Two percent of annual premium earned as reported on the most recent annual financial statement filed with the commissioner on the first one hundred fifty million dollars of premium and one percent of annual premium on the premium in excess of one hundred fifty million dollars; or

(c) An amount equal to the sum of three months' uncovered expenditures as reported on the most recent financial statement filed with the commissioner.

(2) A health maintenance organization registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (1) of this section must continue to have and maintain the minimum net worth required by subsection (1) of this section. A health maintenance organization registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (1) of this section must have and maintain a minimum net worth of:

(a) The amount required immediately prior to July 27, 1997, until December 31, 1997;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1997;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1998; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1999.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health maintenance organization shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, which are unpaid and for which such organization is or may be liable, and to provide for the expense of adjustment or settlement of such claims.

Such liabilities shall be computed in accordance with rules promulgated by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization. [1997 c 212 § 6; 1990 c 119 § 5.]

**48.46.237 Minimum net worth—Domestic or foreign health maintenance organization.** (1) For purposes of this section:

(a) "Domestic health maintenance organization" means a health maintenance organization formed under the laws of this state; and

(b) "Foreign health maintenance organization" means a health maintenance organization formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(2) If the minimum net worth of a domestic health maintenance organization falls below the minimum net worth required by this chapter, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the domestic health maintenance organization to cure the deficiency within ninety days after that service of notice.

(3) If the deficiency is not cured, and proof thereof filed with the commissioner within the ninety-day period, the domestic health maintenance organization shall be declared insolvent and shall be proceeded against as authorized by this code or the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the registration of the domestic health maintenance organization as being hazardous to its subscribers and the people in this state.

(4) If the deficiency is not cured the domestic health maintenance organization shall not issue or deliver any health maintenance agreement after the expiration of the ninety-day period.

(5) If the minimum net worth of a foreign health maintenance organization falls below the minimum net worth required by this chapter, the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the foreign health maintenance organization's registration as being hazardous to its subscribers, enrollees, or the people in this state. [1997 c 212 § 7.]

**48.46.272 Diabetes coverage. (Effective January 1, 1998.)** The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, noninsulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All health benefit plans offered by health maintenance organizations, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For health benefit plans that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes,

injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all health benefit plans, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the health maintenance organization from restricting patients to seeing only health care providers who have signed participating provider agreements with the health maintenance organization or an insuring entity under contract with the health maintenance organization.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The health maintenance organization need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plans that provide benefits identical to the schedule of services covered by the basic health plan, as required by RCW 48.46.064 and 48.46.066. [1997 c 276 § 5.]

**Sunset Act application:** See note following RCW 41.05.185.

**Effective date—1997 c 276:** See note following RCW 41.05.185.

## Chapter 48.47

### MANDATED HEALTH BENEFITS

#### Sections

|           |   |
|-----------|---|
| 48.47.005 | Legislative findings—Purpose.   |
| 48.47.010 | Definitions.  |
| 48.47.020 | Submission of mandated health benefit proposal—Review—Benefit must be authorized by law.                                  |
| 48.47.030 | Mandated health benefit proposal—Guidelines for assessing impact—Inclusion of ad hoc review panels—Health care authority. |
| 48.47.900 | Severability—1997 c 412.  |

**48.47.005 Legislative findings—Purpose.** The legislature finds that there is a continued interest in mandating certain health coverages or offering of health coverages by health carriers; and that improved access to these health care services to segments of the population which desire them can provide beneficial social and health consequences which may be in the public interest.

The legislature finds further, however, that the cost ramifications of expanding health coverages is of continuing concern; and that the merits of a particular mandated benefit

must be balanced against a variety of consequences which may go far beyond the immediate impact upon the cost of insurance coverage. The legislature hereby finds and declares that a systematic review of proposed mandated benefits, which explores all the ramifications of such proposed legislation, will assist the legislature in determining whether mandating a particular coverage or offering is in the public interest. The purpose of this chapter is to establish a procedure for the proposal, review, and determination of mandated benefit necessity. [1997 c 412 § 1; 1984 c 56 § 1. Formerly RCW 48.42.060.]

**48.47.010 Definitions.** Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Appropriate committees of the legislature" or "committees" means nonfiscal standing committees of the Washington state senate and house of representatives that have jurisdiction over statutes that regulate health carriers, health care facilities, health care providers, or health care services.

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

(3) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state, and such other facilities as required by federal law and implementing regulations.

(4) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(5) "Health care service" or "service" means a service, drug, or medical equipment offered or provided by a health care facility and a health care provider relating to the prevention, cure, or treatment of illness, injury, or disease.

(6) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, a health maintenance organization as defined in RCW 48.46.020, plans operating under the state health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated in chapter 48.43 RCW.

(7) "Mandated health benefit," "mandated benefit," or "benefit" means coverage or offering required by law to be provided by a health carrier to: (a) Cover a specific health

care service or services; (b) cover treatment of a specific condition or conditions; or (c) contract, pay, or reimburse specific categories of health care providers for specific services; however, it does not mean benefits established pursuant to chapter 74.09, 41.05, or 70.47 RCW, or scope of practice modifications pursuant to chapter 18.120 RCW. [1997 c 412 § 2.]

**48.47.020 Submission of mandated health benefit proposal—Review—Benefit must be authorized by law.** Mandated health benefits shall be established as follows:

(1) Every person who, or organization that, seeks to establish a mandated benefit shall, at least ninety days prior to a regular legislative session, submit a mandated benefit proposal to the appropriate committees of the legislature, assessing the social impact, financial impact, and evidence of health care service efficacy of the benefit in strict adherence to the criteria enumerated in RCW 48.47.030.

(2) The chair of a committee may request that the department examine the proposal using the criteria set forth in RCW 48.47.030, however, such request must be made no later than nine months prior to a subsequent regular legislative session.

(3) To the extent that funds are appropriated for this purpose, the department shall report to the appropriate committees of the legislature on the appropriateness of adoption no later than thirty days prior to the legislative session during which the proposal is to be considered.

(4) Mandated benefits must be authorized by law. [1997 c 412 § 3; 1989 1st ex.s. c 9 § 221; 1987 c 150 § 79; 1984 c 56 § 2. Formerly RCW 48.42.070.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1987 c 150:** See RCW 18.122.901.

**48.47.030 Mandated health benefit proposal—Guidelines for assessing impact—Inclusion of ad hoc review panels—Health care authority.** (1) Based on the availability of relevant information, the following criteria shall be used to assess the impact of proposed mandated benefits:

(a) The social impact: (i) To what extent is the benefit generally utilized by a significant portion of the population? (ii) To what extent is the benefit already generally available? (iii) If the benefit is not generally available, to what extent has its unavailability resulted in persons not receiving needed services? (iv) If the benefit is not generally available, to what extent has its unavailability resulted in unreasonable financial hardship? (v) What is the level of public demand for the benefit? (vi) What is the level of interest of collective bargaining agents in negotiating privately for inclusion of this benefit in group contracts?

(b) The financial impact: (i) To what extent will the benefit increase or decrease the cost of treatment or service? (ii) To what extent will the coverage increase the appropriate use of the benefit? (iii) To what extent will the benefit be a substitute for a more expensive benefit? (iv) To what extent will the benefit increase or decrease the administrative expenses of health carriers and the premium and administrative expenses of policyholders? (v) What will be the impact of this benefit on the total cost of health care services and on

premiums for health coverage? (vi) What will be the impact of this benefit on costs for state-purchased health care? (vii) What will be the impact of this benefit on affordability and access to coverage?

(c) Evidence of health care service efficacy:

(i) If a mandatory benefit of a specific service is sought, to what extent has there been conducted professionally accepted controlled trials demonstrating the health consequences of that service compared to no service or an alternative service?

(ii) If a mandated benefit of a category of health care provider is sought, to what extent has there been conducted professionally accepted controlled trials demonstrating the health consequences achieved by the mandated benefit of this category of health care provider?

(iii) To what extent will the mandated benefit enhance the general health status of the state residents?

(2) The department shall consider the availability of relevant information in assessing the completeness of the proposal.

(3) The department may supplement these criteria to reflect new relevant information or additional significant issues.

(4) The department shall establish, where appropriate, ad hoc panels composed of related experts, and representatives of carriers, consumers, providers, and purchasers to assist in the proposal review process. Ad hoc panel members shall serve without compensation.

(5) The health care authority shall evaluate the reasonableness and accuracy of cost estimates associated with the proposed mandated benefit that are provided to the department by the proposer or other interested parties, and shall provide comment to the department. Interested parties may, in addition, submit data directly to the department. [1997 c 412 § 4; 1984 c 56 § 3. Formerly RCW 48.42.080.]

**48.47.900 Severability—1997 c 412.** 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. [1997 c 412 § 7.]

## Title 49

### LABOR REGULATIONS

#### Chapters

- 49.17 Washington industrial safety and health act.
- 49.46 Minimum wage act.
- 49.60 Discrimination—Human rights commission.
- 49.78 Family leave.

#### Chapter 49.17

### WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

#### Sections

- 49.17.020 Definitions.
- 49.17.022 Legislative findings and intent—Definition of agriculture.

49.17.055 WISHA advisory committee—Appointment of members—Duties—Terms, compensation, and expenses.

49.17.290 Fire fighting technical review committee—Members—Duties—Definition. (*Expires July 1, 2001.*)

**49.17.020 Definitions.** For the purposes of this chapter:

(1) The term "agriculture" means farming and includes, but is not limited to:

- (a) The cultivation and tillage of the soil;
- (b) Dairying;
- (c) The production, cultivation, growing, and harvesting of any agricultural or horticultural commodity;
- (d) The raising of livestock, bees, fur-bearing animals, or poultry; and

(e) Any practices performed by a farmer or on a farm, incident to or in connection with such farming operations, including but not limited to preparation for market and delivery to:

- (i) Storage;
- (ii) Market; or
- (iii) Carriers for transportation to market.

The term "agriculture" does not mean a farmer's processing for sale or handling for sale a commodity or product grown or produced by a person other than the farmer or the farmer's employees.

(2) The term "director" means the director of the department of labor and industries, or his designated representative.

(3) The term "department" means the department of labor and industries.

(4) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: PROVIDED, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(5) The term "employee" means an employee of an employer who is employed in the business of his employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(6) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(7) The term "safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(8) The term "work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or

service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(9) The term "working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day. [1997 c 362 § 2; 1973 c 80 § 2.]

*Department of labor and industries: Chapter 43.22 RCW.*

**49.17.022 Legislative findings and intent—Definition of agriculture.** The legislature finds that the state's farms are diverse in their nature and the owners, managers, and their employees continually find new ways to plant, raise, harvest, process, store, market, and distribute their products. The legislature further finds that the department of labor and industries needs guidance in determining when activities related to agricultural products are to be regulated as agricultural activities and when they should be regulated as other activities. It is the intent of the legislature that activities performed by a farmer as incident to or in conjunction with his or her farming activities be regulated as agricultural activities. For this purpose, an agricultural activity is to be interpreted broadly, based on the definition of "agriculture" in RCW 49.17.020. [1997 c 362 § 1.]

**49.17.055 WISHA advisory committee—Appointment of members—Duties—Terms, compensation, and expenses.** The director shall appoint a WISHA advisory committee composed of ten members: Four members representing subject workers, each of whom shall be appointed from a list of at least three names submitted by a recognized state-wide organization of employees, representing a majority of employees; four members representing subject employers, each of whom shall be appointed from a list of at least three names submitted by a recognized state-wide organization of employers, representing a majority of employers; and two ex officio members, without a vote, one of whom shall be the chairperson of the board of industrial insurance appeals, and the other representing the department. The member representing the department shall be chairperson. The committee shall provide comment on department rule making, policies, and other initiatives. The committee shall also conduct a continuing study of any aspect of safety and health the committee determines to require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1997, and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each group initially appointed whose term shall expire on June 30, 1998, and one member from each group whose term shall expire on June 30, 1999. The members shall serve without compensation, but are entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire such experts, if any, as it requires to discharge its duties and

may utilize such personnel and facilities of the department and board of industrial insurance appeals as it needs, without charge. All expenses of the committee must be paid by the department. [1997 c 107 § 1.]

**49.17.290 Fire fighting technical review committee—Members—Duties—Definition.** (*Expires July 1, 2001.*) (1) The director shall establish a fire fighting technical review committee to be composed of eight members appointed by the director. Four members must be representatives of fire fighters, two of whom must be members of the law enforcement officers' and fire fighters' retirement system, and be selected from a list of not less than six names submitted to the director by organizations, state-wide in scope, which through their affiliates embrace a cross-section and a majority of fire fighters in the state. Two members must be representatives of fire chiefs, and be selected from a list of at least five names submitted to the director by a recognized state-wide organization representing a majority of fire chiefs. Two members must be representatives of fire commissioners, and be selected from a list of at least five names submitted to the director by a recognized state-wide organization representing a majority of fire commissioners.

(2) The director, or his or her designee, shall be an ex officio member of the committee. All appointments are for a term of three years, except the director may appoint the initial members to staggered terms of from one to three years. Members of the committee hold office until their successors are appointed. The director may remove any member for cause. In case of a vacancy, the director is authorized to appoint a person to serve for the remainder of the unexpired term. The director shall make all appointments in conformity with the plan in this subsection.

(3) The director or designee shall be the chair of the committee. The committee may meet at a time and place designated by the director, or a majority of the members, and shall hold meetings during the year to advise the director. Each member of the committee shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

(4)(a) The purpose of the committee is to provide technical assistance to the department if an inspection or investigation under this chapter of an emergency response situation reveals a possible violation of RCW 49.17.060, or a safety or health standard adopted under this chapter. The committee may also provide technical assistance to the department if an inspection or investigation of an emergency response situation reveals possible noncompliance with industry consensus standards for fire fighting. If the department issues a citation under this chapter based on events in an emergency situation, the department shall consult with the committee before issuing a citation that includes a penalty authorized by RCW 49.17.140.

(b) The committee's recommendation is advisory only and does not limit the department's authority to assess a penalty. This section does not create a right or cause of action or add to any existing right or cause of action.

(5) For the purpose of this section, "emergency response situation" includes, but is not limited to, situations in which employees of a fire department or fire district are involved

in a fire combat scene, a hazardous materials response situation, a rescue, or a response involving emergency medical services.

(6) This section expires July 1, 2001. [1997 c 208 § 1.]

## Chapter 49.46

### MINIMUM WAGE ACT

#### Sections

49.46.010 Definitions.  
49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.

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

(1) "Director" means the director of labor and industries;  
(2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director;

(3) "Employ" includes to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the Washington personnel resources board pursuant to chapter 41.06 RCW;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation

therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(7) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry. [1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

**Construction—1997 c 203:** See note following RCW 49.46.130.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Effective date—1989 c 1 (Initiative Measure No. 518, approved November 8, 1988):** "This act shall take effect January 1, 1989." [1989 c 1 § 5.]

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

**49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.** (1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:



(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259).

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess

of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed. [1997 c 311 § 1; 1997 c 203 § 2; 1995 c 5 § 1; 1993 c 191 § 1; 1992 c 94 § 1; 1989 c 104 § 1. Prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

**Reviser's note:** This section was amended by 1997 c 203 § 2 and by 1997 c 311 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Construction—1997 c 203:** "Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of the effective date of this act [July 27, 1997] until the expiration date of such agreement." [1997 c 203 § 4.]

**Intent—Application—1995 c 5:** "This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all administrative and judicial actions commenced on or after February 1, 1995, and pending on March 30, 1995, and such actions commenced on or after March 30, 1995." [1995 c 5 § 2.]

**Effective date—1995 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect immediately [March 30, 1995]." [1995 c 5 § 3.]

## Chapter 49.60 DISCRIMINATION—HUMAN RIGHTS COMMISSION

### Sections

|           |   |
|-----------|---|
| 49.60.010 | Purpose of chapter.   |
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| 49.60.120 | Certain powers and duties of commission.  |
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| 49.60.180 | Unfair practices of employers.  |
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| 49.60.200 | Unfair practices of employment agencies.  |
| 49.60.215 | Unfair practices of places of public resort, accommodation, assemblage, amusement.  |
| 49.60.222 | Unfair practices with respect to real estate transactions, facilities, or services.   |
| 49.60.223 | Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, disability, etc.                    |
| 49.60.224 | Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void—Unfair practice.                   |
| 49.60.225 | Relief for unfair practice in real estate transaction—Damages—Penalty.  |
| 49.60.360 | Refueling services for disabled drivers—Violation—Investigation—Intentional display of plate or placard invalid or not legally issued prohibited—Fine—Notice to disabled persons. |
| 49.60.370 | Liability for killing or injuring dog guide or service animal—Penalty in addition to other remedies or penalties—Recovery of attorneys' fees and costs—No duty to investigate.    |
| 49.60.380 | License waiver for dog guide and service animals.   |
| 49.60.390 | Rule-making authority—Deadline—1997 c 271.  |

**49.60.010 Purpose of chapter.** This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person; and the commission

established hereunder is hereby given general jurisdiction and power for such purposes. [1997 c 271 § 1; 1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

**Effective date—1995 c 259:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 259 § 7.]

**Severability—1993 c 510:** "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." [1993 c 510 § 26.]

**Severability—1969 ex.s. c 167:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

**Severability—1957 c 37:** "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.]

**Severability—1949 c 183:** "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.]

*Urban renewal law—Discrimination prohibited: RCW 35.81.170.*

**49.60.030 Freedom from discrimination—Declaration of civil rights.** (1) The right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person

or persons from any business relationship on the basis of race, color, creed, religion, sex, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce. [1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

**Intent—1995 c 135:** See note following RCW 29.04.160.

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1993 c 69:** "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." [1993 c 69 § 17.]

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**Severability—1957 c 37:** See note following RCW 49.60.010.

**Severability—1949 c 183:** See note following RCW 49.60.010.

#### **49.60.040 Definitions.** As used in this chapter:

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

(2) "Commission" means the Washington state human rights commission;

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed;

(8) "National origin" includes "ancestry";

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person, to be treated as not welcome, accepted, desired, or solicited;

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real

property, transacting or applying for a real estate loan, or the provision of brokerage services;

(13) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(14) "Sex" means gender;

(15) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur;

(16) "Complainant" means the person who files a complaint in a real estate transaction;

(17) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction;

(18) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred;

(19) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(20) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units;

(21) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building;

(22) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons;

(23) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical disability. [1997 c 271 § 3; 1995 c 259 § 2. Prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

**Effective date—1995 c 259:** See note following RCW 49.60.010.

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1993 c 69:** See note following RCW 49.60.030.

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**Construction—1961 c 103:** "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.]

**Severability—1957 c 37:** See note following RCW 49.60.010.

**Severability—1949 c 183:** See note following RCW 49.60.010.

#### **49.60.120 Certain powers and duties of commission.**

The commission shall have the functions, powers and duties:

(1) To appoint an executive director and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, impartially investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, with other Washington state agencies, commissions, and other government entities, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities. [1997 c 271 § 4. Prior: 1993 c 510 § 6; 1993 c 69 § 4; 1985 c 185 § 10; 1973 1st ex.s. c 214 § 4; 1973 c 141 § 7; 1971 ex.s. c 81 § 1; 1957 c 37 § 7; 1955 c 270 § 8; prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1993 c 69:** See note following RCW 49.60.030.

**Effective date—1971 ex.s. c 81:** "The effective date of this act shall be July 1, 1971." [1971 ex.s. c 81 § 6.]

*Human rights commission to investigate unlawful use of refueling services for disabled: RCW 49.60.360.*

**49.60.130 May create advisory agencies and conciliation councils.** The commission has power to create such advisory agencies and conciliation councils, local, regional, or state-wide, as in its judgment will aid in effectuating the purposes of this chapter. The commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The commission may use organizations specifically experienced in dealing with questions of discrimination. [1997 c 271 § 5; 1993 c 510 § 7; 1985 c 185 § 11; 1975-'76 2nd ex.s. c 34 § 146; 1973 1st ex.s. c 214 § 5; 1973 c 141 § 8; 1971 ex.s. c 81 § 2; 1955 c 270 § 9. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

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

**Effective date—1971 ex.s. c 81:** See note following RCW 49.60.120.

**49.60.174 Evaluation of claim of discrimination—Actual or perceived HIV infection.** (1) For the purposes of determining whether an unfair practice under this chapter has occurred, claims of discrimination based on actual or perceived HIV infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a disabled person.

(2) Subsection (1) of this section shall not apply to transactions with insurance entities, health service contractors, or health maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178 to prohibit fair discrimination on the basis of actual HIV infection status when bona fide statistical differences in risk or exposure have been substantiated.

(3) For the purposes of this chapter, "HIV" means the human immunodeficiency virus, and includes all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the infected person immunodeficient. [1997 c 271 § 6; 1993 c 510 § 8; 1988 c 206 § 902.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1988 c 206:** See RCW 70.24.900.

**49.60.175 Unfair practices of financial institutions.**

It shall be an unfair practice to use the sex, race, creed, color, national origin, marital status, or the presence of any sensory, mental, or physical disability of any person, or the use of a trained dog guide or service animal by a disabled person, concerning an application for credit in any credit transaction to determine the credit worthiness of an applicant. [1997 c 271 § 7; 1993 c 510 § 9; 1979 c 127 § 4; 1977 ex.s. c 301 § 14; 1973 c 141 § 9; 1959 c 68 § 1.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

*Fairness in lending act: RCW 30.04.500 through 30.04.515.*

**49.60.176 Unfair practices with respect to credit transactions.**

(1) It is an unfair practice for any person whether acting for himself, herself, or another in connection with any credit transaction because of race, creed, color, national origin, sex, marital status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person:

(a) To deny credit to any person;

(b) To increase the charges or fees for or collateral required to secure any credit extended to any person;

(c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;

(d) To attempt to do any of the unfair practices defined in this section.

(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon. [1997 c 271 § 8; 1993 c 510 § 10; 1979 c 127 § 5; 1973 c 141 § 5.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**49.60.178 Unfair practices with respect to insurance transactions.**

It is an unfair practice for any person whether acting for himself, herself, or another in connection with an insurance transaction or transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person because of sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this section. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060, health maintenance agreement is defined in RCW 48.46.020, and "health maintenance organization" is defined in RCW 48.46.020.

The fact that such unfair practice may also be a violation of chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an action brought under this section.

The insurance commissioner, under RCW 48.30.300, and the human rights commission, under chapter 49.60 RCW, shall have concurrent jurisdiction under this section and shall enter into a working agreement as to procedure to be followed in complaints under this section. [1997 c 271 § 9; 1993 c 510 § 11; 1984 c 32 § 1; 1979 c 127 § 6; 1974 ex.s. c 32 § 2; 1973 c 141 § 6.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**49.60.180 Unfair practices of employers.** It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, unless based upon a bona fide occupational qualification: **PROVIDED**, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved.

(2) To discharge or bar any person from employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: **PROVIDED**, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: **PROVIDED**, Nothing contained herein shall prohibit advertising in a foreign language. [1997 c 271 § 10; 1993 c 510 § 12; 1985 c 185 § 16; 1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Effective date—1971 ex.s. c 81:** See note following RCW 49.60.120.

*Element of age not to affect apprenticeship agreements:* RCW 49.04.910.

*Labor—Prohibited practices:* Chapter 49.44 RCW.

*Unfair practices in employment because of age of employee or applicant:* RCW 49.44.090.

**49.60.190 Unfair practices of labor unions.** It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(2) To expel from membership any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person. [1997 c 271 § 11; 1993 c 510 § 13; 1985 c 185 § 17; 1973 1st ex.s. c 214 § 8; 1973 c 141 § 11; 1971 ex.s. c 81 § 4; 1961 c 100 § 2; 1957 c 37 § 10. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Effective date—1971 ex.s. c 81:** See note following RCW 49.60.120.

*Element of age not to affect apprenticeship agreements:* RCW 49.04.910.

**49.60.200 Unfair practices of employment agencies.**

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, creed, color, or national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: **PROVIDED**, Nothing contained herein shall prohibit advertising in a foreign language. [1997 c 271 § 12; 1993 c 510 § 14; 1973 1st ex.s. c 214 § 9; 1973 c 141 § 12; 1971 ex.s. c 81 § 5; 1961 c 100 § 3; 1957 c 37 § 11. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Effective date—1971 ex.s. c 81:** See note following RCW 49.60.120.

*Element of age not to affect apprenticeship agreements:* RCW 49.04.910.

*Fraud by employment agent:* RCW 49.44.050.

**49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement.**

It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding

from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sex, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person: **PROVIDED**, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a disabled person except as otherwise required by law: **PROVIDED**, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice. [1997 c 271 § 13; 1993 c 510 § 16. Prior: 1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

*Denial of civil rights: RCW 9.91.010.*

**49.60.222 Unfair practices with respect to real estate transactions, facilities, or services.** (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person:

(a) To refuse to engage in a real estate transaction with a person;

(b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, circulate, post, or mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument

imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct covered multifamily dwellings and premises in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained dog guide or service animal. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

Nothing in (a) or (b) of this subsection shall apply to:

(i) A single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural



changes, modifications, or additions to make facilities accessible to a disabled person except as otherwise required by law. Nothing in this section affects the rights, responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter. Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. [1997 c 400 § 3; 1997 c 271 § 14; 1995 c 259 § 3. Prior: 1993 c 510 § 17; 1993 c 69 § 5; 1989 c 61 § 1; 1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

**Reviser's note:** This section was amended by 1997 c 271 § 14 and by 1997 c 400 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1995 c 259:** See note following RCW 49.60.010.

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1993 c 69:** See note following RCW 49.60.030.

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, disability, etc.** It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, families with children status, or with any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person. [1997 c 271 § 15. Prior: 1993 c 510 § 18; 1993 c 69 § 6; 1979 c 127 § 9; 1969 ex.s. c 167 § 5.]

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1993 c 69:** See note following RCW 49.60.030.

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**49.60.224 Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void—Unfair practice.** (1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, families with children status, or with any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, families with children status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title. [1997 c 271 § 16; 1993 c 69 § 8; 1979 c 127 § 10; 1969 ex.s. c 167 § 6.]

**Severability—1993 c 69:** See note following RCW 49.60.030.

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**49.60.225 Relief for unfair practice in real estate transaction—Damages—Penalty.** (1) When a reasonable cause determination has been made under RCW 49.60.240 that an unfair practice in a real estate transaction has been committed and a finding has been made that the respondent has engaged in any unfair practice under RCW 49.60.250, the administrative law judge shall promptly issue an order for such relief suffered by the aggrieved person as may be appropriate, which may include actual damages as provided by the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable relief. Such order may, to further the public interest, assess a civil penalty against the respondent:

(a) In an amount up to ten thousand dollars if the respondent has not been determined to have committed any prior unfair practice in a real estate transaction;

(b) In an amount up to twenty-five thousand dollars if the respondent has been determined to have committed one other unfair practice in a real estate transaction during the five-year period ending on the date of the filing of this charge; or

(c) In an amount up to fifty thousand dollars if the respondent has been determined to have committed two or more unfair practices in a real estate transaction during the seven-year period ending on the date of the filing of this charge, for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, families with children status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person. Enforcement of the order and appeal therefrom by the complainant or respondent may be made as provided in RCW 49.60.260 and 49.60.270.

If acts constituting the unfair practice in a real estate transaction that is the object of the charge are determined to have been committed by the same natural person who has been previously determined to have committed acts constituting an unfair practice in a real estate transaction, then the civil penalty of up to fifty thousand dollars may be imposed without regard to the period of time within which any subsequent unfair practice in a real estate transaction occurred. All civil penalties assessed under this section shall be paid into the state treasury and credited to the general fund.

(2) Such order shall not affect any contract, sale, conveyance, encumbrance, or lease consummated before the issuance of an order that involves a bona fide purchaser, encumbrancer, or tenant who does not have actual notice of the charge filed under this chapter.

(3) Notwithstanding any other provision of this chapter, persons awarded damages under this section may not receive additional damages pursuant to RCW 49.60.250. [1997 c 271 § 17; 1995 c 259 § 4. Prior: 1993 c 510 § 20; 1993 c 69 § 9; 1985 c 185 § 19; 1979 c 127 § 11; 1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

**Effective date—1995 c 259:** See note following RCW 49.60.010.

**Severability—1993 c 510:** See note following RCW 49.60.010.

**Severability—1993 c 69:** See note following RCW 49.60.030.

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**49.60.360 Refueling services for disabled drivers—Violation—Investigation—Intentional display of plate or placard invalid or not legally issued prohibited—Fine—Notice to disabled persons.** (1) Every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility, shall provide, upon request, refueling service to disabled drivers, unaccompanied by passengers capable of safely providing refueling service, of vehicles which display a disabled person's license plate or placard issued by the department of licensing. The price charged for the motor vehicle fuel in such a case shall be no greater than that which the facility otherwise would charge the public generally to purchase motor vehicle fuel without refueling service. This section does not require a facility to provide disabled drivers with services, including but not limited to checking oil or cleaning windshields, other than refueling services.

(2) This section does not apply to:

(a) Exclusive self-service gas stations which have remotely controlled gas pumps and which never provide pump island service; and

(b) Convenience stores which sell gasoline, which have remotely controlled gas pumps and which never provide pump island service.

(3) Any person who, as a responsible managing individual setting service policy of a station or facility or as an employee acting independently against set service policy, acts in violation of this section is guilty of a misdemeanor. This subsection shall be enforced by the prosecuting attorney.

(4) The human rights commission shall, upon the filing of a verified written complaint by any person, investigate the

actions of any person, firm, partnership, association, trustee, or corporation alleged to have violated this section. The complaint shall be in the form prescribed by the commission. The commission may, upon its own motion, issue complaints and conduct investigations of alleged violations of this section.

RCW 49.60.240 through 49.60.280 shall apply to complaints under this section.

(5) In addition to those matters referred pursuant to subsection (3) of this section, the prosecuting attorney may investigate and prosecute alleged violations of this section.

(6) Any person who intentionally displays a license plate or placard which is invalid, or which was not lawfully issued to that person, for the purpose of obtaining refueling service under subsection (1) of this section shall be subject to a civil fine of one hundred dollars for each such violation.

(7) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility.

(8) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person who is issued a disabled person's license plate or placard.

(9) For the purposes of this section, "refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

(10) Nothing in this section limits or restricts the rights or remedies provided under chapter 49.60 RCW. [1994 c 262 § 17; 1985 c 309 § 1. Formerly RCW 70.84.090.]

**49.60.370 Liability for killing or injuring dog guide or service animal—Penalty in addition to other remedies or penalties—Recovery of attorneys' fees and costs—No duty to investigate.** (1) A person who negligently or maliciously kills or injures a dog guide or service animal is liable for a penalty of one thousand dollars, to be paid to the user of the animal. The penalty shall be in addition to and not in lieu of any other remedies or penalties, civil or criminal, provided by law.

(2) A user or owner of a dog guide or service animal, whose animal is negligently or maliciously injured or killed, is entitled to recover reasonable attorneys' fees and costs incurred in pursuing any civil remedy.

(3) The commission has no duty to investigate any negligent or malicious acts referred to under this section. [1997 c 271 § 23; 1988 c 89 § 1. Formerly RCW 70.84.100.]

**49.60.380 License waiver for dog guide and service animals.** A county, city, or town shall honor a request by a blind person or hearing impaired person not to be charged a fee to license his or her dog guide, or a request by a physically disabled person not to be charged a fee to license his or her service animal. [1997 c 271 § 24; 1989 c 41 § 1. Formerly RCW 70.84.120.]

**49.60.390 Rule-making authority—Deadline—1997 c 271.** The Washington state human rights commission shall

adopt rules implementing chapter 271, Laws of 1997 no later than March 1, 1998. [1997 c 271 § 25.]

### Chapter 49.78 FAMILY LEAVE

#### Sections

49.78.005 Administration and enforcement of this chapter to cease while federal family and medical leave act provides the same or more family leave—Rights under RCW 49.78.070(1)(b) preserved—Enforcement.

**49.78.005 Administration and enforcement of this chapter to cease while federal family and medical leave act provides the same or more family leave—Rights under RCW 49.78.070(1)(b) preserved—Enforcement.** (1) Except as provided in subsection (2) of this section, the department shall cease to administer and enforce this chapter beginning on July 27, 1997, and until the earlier of the following dates:

(a) The effective date of the repeal of the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6); or

(b) July 1st of the year following the year in which amendments to the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) take effect that provide less family leave than is provided under RCW 49.78.030. In determining whether the federal law provides the same or more leave, the department shall only consider whether (i) the total period of leave allowed under the amended federal law is twelve or more workweeks in a twenty-four month period, and (ii) the types of leave authorized under the amended federal law are similar to the types authorized in this chapter.

(2) An employee's right under RCW 49.78.070(1)(b) to be returned to a workplace within twenty miles of the employee's workplace when leave commenced shall remain in effect. The family leave required by U.S.C. 29.2612(a)(1)(A) and (B) of the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) shall be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth. The department shall enforce this subsection under RCW 49.78.140 through 49.78.190, except that an initial notice of infraction shall state that the employer has thirty days in which to take corrective action. No infraction or penalty may be assessed if the employer complies with the requirements of the initial notice of infraction. [1997 c 16 § 1.]

## Title 50 UNEMPLOYMENT COMPENSATION

#### Chapters

50.12 Administration.  
50.13 Records and information—Privacy and confidentiality.  
50.22 Extended benefits.

### Chapter 50.12 ADMINISTRATION

#### Sections

50.12.045 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.  
50.12.070 Employing unit records and reports—Unified business identifier account number records.  
50.12.270 Rural natural resources impact areas—Training and services program—Survey—Definition.  
50.12.280 Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation.

**50.12.045 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.** The commissioner may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under chapter 19.02 RCW. [1997 c 51 § 5.]

**Intent—1997 c 51:** See note following RCW 19.02.300.

**50.12.070 Employing unit records and reports—Unified business identifier account number records.** (1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the commissioner, but not to exceed two hundred fifty dollars, to be collected as provided in RCW 50.24.120.

(2)(a) Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the names of all such workers, and until April 1, 1978, the number of weeks for which the worker earned the "qualifying weekly wage", and beginning July 1, 1977, the hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage

in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. [1997 c 54 § 2; 1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

**Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23:** See notes following RCW 50.04.073.

**Effective dates—Construction—1977 ex.s. c 33:** See notes following RCW 50.04.030.

**Effective date—1975 1st ex.s. c 228:** See note following RCW 50.04.355.

**50.12.270 Rural natural resources impact areas—Training and services program—Survey—Definition.** (1)

Subject to the availability of state or federal funds, the employment security department, as a member of the agency rural community assistance task force, shall consult with and may subcontract with local educational institutions, local businesses, local labor organizations, local associate development organizations, local private industry councils, local social service organizations, and local governments in carrying out a program of training and services, including training through the entrepreneurial training program, for dislocated workers in rural natural resources impact areas.

(2) The department shall conduct a survey to determine the actual future employment needs and jobs skills in rural natural resources impact areas.

(3) The department shall coordinate the services provided in this section with all other services provided by the department and with the other economic recovery efforts undertaken by state and local government agencies on behalf of the rural natural resources impact areas.

(4) The department shall make every effort to procure additional federal and other moneys for the efforts enumerated in this section.

(5) For the purposes of this section, "rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (6) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (6) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (6) of this section.

(6) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter. [1997 c 367 § 17; 1995 c 226 § 30; 1991 c 315 § 3.]

**Sunset Act application:** See note following RCW 43.31.601.

**Severability—Conflict with federal requirements—Effective date—1997 c 367:** See notes following RCW 43.31.601.

**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.31.601.

**Intent—1991 c 315:** "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

**Severability—Conflict with federal requirements—Effective date—1991 c 315:** See RCW 50.70.900 through 50.70.902.

**50.12.280 Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation.**

The displaced workers account is established. All moneys from RCW 82.32.393 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to provide for compensation and retraining of displaced workers of the thermal electric generation facility and of the coal mine that supplied coal to the facility. The benefits from the account are in addition to all other compensation and retraining benefits to which the displaced workers are entitled under existing state law. The employment security department shall administer the distribution of moneys from the account. [1997 c 368 § 13.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

## Chapter 50.13

## RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

## Sections

50.13.060 Access to records or information by governmental agencies.

**50.13.060 Access to records or information by governmental agencies.** (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1)(c). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) For purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program, the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program shall have access to employer wage information on clients in the program whose names and social security numbers are provided to the department. The information provided by the department may be used only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services is not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is directly connected to the official purpose for which the records or information were obtained.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply. [1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

**Reviser's note:** This section was amended by 1997 c 58 § 1004 and by 1997 c 409 § 605, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 409 § 605:** "Section 605 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 1997]." [1997 c 409 § 608.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Conflict with federal requirements—1996 c 79:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 79 § 3.]

**Effective date—1996 c 79:** "This act shall take effect July 1, 1996." [1996 c 79 § 4.]

**Effective date—1993 c 281:** See note following RCW 41.06.022.

## Chapter 50.22 EXTENDED BENEFITS

### Sections

50.22.090 Additional benefit period for rural natural resources impact areas—Eligibility—Training program—Rules.

**50.22.090 Additional benefit period for rural natural resources impact areas—Eligibility—Training program—Rules.** (1) An additional benefit period is established for rural natural resources impact areas, defined in this section, and determined by the office of financial management and the employment security department. Benefits shall be paid as provided in subsection (3) of this section to exhaustees eligible under subsection (4) of this section.

(2) The additional benefit period for a county may end no sooner than fifty-two weeks after the additional benefit period begins.

(3) Additional benefits shall be paid as follows:

(a) No new claims for additional benefits shall be accepted for weeks beginning after July 1, 1999, but for claims established on or before July 1, 1999, weeks of

unemployment occurring after July 1, 1999, shall be compensated as provided in this section.

(b) The total additional benefit amount shall be one hundred four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year. Additional benefits shall not be payable for weeks more than two years beyond the end of the benefit year of the regular claim for an individual whose benefit year ends on or after July 27, 1991, and shall not be payable for weeks ending on or after two years after March 26, 1992, for individuals who become eligible as a result of chapter 47, Laws of 1992.

(c) Notwithstanding the provisions of (b) of this subsection, individuals will be entitled to up to five additional weeks of benefits following the completion or termination of training.

(d) Notwithstanding the provisions of (b) of this subsection, individuals enrolled in prerequisite remedial education for a training program expected to last at least one year will be entitled to up to thirteen additional weeks of benefits which shall not count toward the total in (b) of this subsection.

(e) The weekly benefit amount shall be calculated as specified in RCW 50.22.040.

(f) Benefits paid under this section shall be paid under the same terms and conditions as regular benefits. The additional benefit period shall be suspended with the start of an extended benefit period, or any totally federally funded benefit program, with eligibility criteria and benefits comparable to the program established by this section, and shall resume the first week following the end of the federal program.

(g) The amendments in chapter 316, Laws of 1993 affecting subsection (3)(b) and (c) of this section shall apply in the case of all individuals determined to be monetarily eligible under this section without regard to the date eligibility was determined.

(4) An additional benefit eligibility period is established for any exhaustee who:

(a)(i) At the time of last separation from employment resides in a county with an unemployment rate for 1996 at least twenty percent or more above the state average and at least fifteen percent above their own county unemployment rate in 1988 and the county meets one of the following two criteria:

(A) It is a county with a lumber and woods products employment quotient at least three times the state average and has experienced actual job losses in these industries since 1988 of one hundred jobs or more or fifty or more jobs in a county with a population of forty thousand or less; or

(B) It is a county with a commercial salmon fishing employment quotient at least three times the state average and has experienced actual job losses in this industry since 1988 of one hundred jobs or more or fifty or more jobs in a county with a population of forty thousand or less; and

(I) The exhaustee has during his or her base year earned wages of at least one thousand hours; and

(II) The exhaustee is determined by the employment security department in consultation with its labor market and economic analysis division to be a displaced worker; or

(ii) During his or her base year, earned wages in at least one thousand hours in either the forest products industry, which shall be determined by the department but shall include the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment or the fishing industry assigned the standard industrial classification code "0912". The commissioner may adopt rules further interpreting the industries covered under this subsection. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(6)(c); and

(b)(i) Has received notice of termination or layoff; and

(ii) Is unlikely, in the determination of the employment security department in consultation with its labor market and economic analysis division, to return to employment in his or her principal occupation or previous industry because of a diminishing demand within his or her labor market for his or her skills in the occupation or industry; and

(c)(i) Is notified by the department of the requirements of this section and develops an individual training program that is submitted to the commissioner for approval not later than sixty days after the individual is notified of the requirements of this section, and enters the approved training program not later than ninety days after the date of the individual's termination or layoff, or ninety days after July 1, 1991, whichever is later, unless the department determines that the training is not available during the ninety-day period, in which case the individual shall enter training as soon as it is available; or

(ii) Is enrolled in training approved under this section on a full-time basis and maintains satisfactory progress in the training. By April 1, 1998, the employment security department must redetermine a new list of eligible and ineligible counties based on a comparison of 1988 and 1997 employment rates. Any changed eligibility status will apply only to new claims for regular unemployment insurance effective after April 1, 1998.

(5) For the purposes of this section:

(a) "Training program" means:

(i) A remedial education program determined to be necessary after counseling at the educational institution in which the individual enrolls pursuant to his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is training for a labor demand occupation; and

(B) Is likely to facilitate a substantial enhancement of the individual's marketable skills and earning power.

(b) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410(3).

(c) "Training allowance or stipend" means discretionary use, cash-in-hand payments available to the individual to be used as the individual sees fit, but does not mean direct or indirect compensation for training costs, such as tuition or books and supplies.

(6) The commissioner shall adopt rules as necessary to implement this section.

(7) The provisions of RCW 50.22.010(10) shall not apply to anyone who establishes eligibility for additional benefits under this section and whose benefit year ends after January 1, 1994. These individuals will have the option of remaining on the original claim or filing a new claim. [1997 c 367 § 4. Prior: 1995 c 226 § 5; 1995 c 57 § 2; 1993 c 316 § 10; 1992 c 47 § 2; 1991 c 315 § 4.]

**Sunset Act application:** See note following RCW 43.31.601.

**Severability—Conflict with federal requirements—Effective date—1997 c 367:** See notes following RCW 43.31.601.

**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.31.601.

**Application—Effective date—1995 c 57:** See notes following RCW 50.16.094.

**Effective date—1993 c 316 § 10:** "Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 316 § 11.]

**Finding—1992 c 47:** "The legislature finds that the timber retraining benefits program as enacted in RCW 50.22.090 did not provide benefits to workers who were unemployed more than one year prior to its effective date. In order to provide benefits to these individuals, this act extends the benefits of the timber retraining benefits program to any eligible worker who filed an unemployment claim beginning on or after January 1, 1989." [1992 c 47 § 1.]

**Severability—1992 c 47:** "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." [1992 c 47 § 3.]

**Conflict with federal requirements—1992 c 47:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1992 c 47 § 4.]

**Intent—1991 c 315:** See note following RCW 50.12.270.

**Severability—Conflict with federal requirements—Effective date—1991 c 315:** See RCW 50.70.900 through 50.70.902.

## Title 51

### INDUSTRIAL INSURANCE

#### Chapters

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| <b>51.04</b> | <b>General provisions.</b>  |
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**Chapter 51.04**  
**GENERAL PROVISIONS**

## Sections

- 51.04.030 Medical aid—Rules—Adoption of maximum fees—  
Maintenance of records and payment of medical bills.
- 51.04.130 Industrial insurance coverage for workers at the Hanford  
Nuclear Reservation—Special agreements.

**51.04.030 Medical aid—Rules—Adoption of maximum fees—Maintenance of records and payment of medical bills.** (1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, and including chiropractic care, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: **PROVIDED**, That, the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: **AND PROVIDED FURTHER**, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as state-wide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in \*RCW 34.05.010(15).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of

the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it. [1997 c 325 § 2; 1994 c 164 § 25. Prior: 1993 c 515 § 1; 1993 c 159 § 1; 1989 c 189 § 1; 1986 c 200 § 8; 1980 c 14 § 1; prior: 1977 ex.s. c 350 § 2; 1977 ex.s. c 239 § 1; 1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030; prior: (i) 1917 c 28 § 6; RRS § 7715. (ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

\*Reviser's note: RCW 34.05.010 was amended by 1997 c 126 § 2 and subsection (15) was renumbered as subsection (16).

**51.04.130 Industrial insurance coverage for workers at the Hanford Nuclear Reservation—Special agreements.** The department of labor and industries upon the request of the secretary of defense of the United States or the secretary of the United States department of energy, may in its discretion approve special insuring agreements providing industrial insurance coverage for workers engaged in the performance of work, either directly or indirectly, for the United States, regarding projects and contracts at the Hanford Nuclear Reservation. The agreements need not conform to the requirements specified in the industrial insurance law of this state if the department finds that the application of the plan will effectively aid the national interest. The department may also approve or direct changes or modifications of the agreements as it deems necessary.

An agreement entered into under this section remains in full force and effect for as long as the department deems it necessary to accomplish the purposes of this section. [1997 c 109 § 1; 1951 c 144 § 1.]

**Severability—1997 c 109:** "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." [1997 c 109 § 4.]

**Chapter 51.08**  
**DEFINITIONS**

## Sections

- 51.08.013 "Acting in the course of employment."  
51.08.050 "Dependent."

**51.08.013 "Acting in the course of employment."**

(1) "Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

(2) "Acting in the course of employment" does not include:

(a) Time spent going to or coming from the employer's place of business in an alternative commute mode, notwithstanding that the employer (i) paid directly or indirectly, in

whole or in part, the cost of a fare, pass, or other expense associated with the alternative commute mode; (ii) promoted and encouraged employee use of one or more alternative commute modes; or (iii) otherwise participated in the provision of the alternative commute mode.

(b) An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

(3) "Alternative commute mode" means (a) a carpool or vanpool arrangement whereby a group of at least two but not more than fifteen persons including passengers and driver, is transported between their places of abode or termini near those places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution; (b) a bus, ferry, or other public transportation service; or (c) a nonmotorized means of commuting such as bicycling or walking. [1997 c 250 § 10; 1995 c 179 § 1; 1993 c 138 § 1; 1979 c 111 § 15; 1977 ex.s. c 350 § 8; 1961 c 107 § 3.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

**51.08.050 "Dependent."** "Dependent" means any of the following named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower, or child, viz: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the worker. [1997 c 325 § 6; 1977 ex.s. c 350 § 11; 1961 c 23 § 51.08.050. Prior: 1957 c 70 § 8; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

## Chapter 51.12

### EMPLOYMENTS AND OCCUPATIONS COVERED

#### Sections

51.12.020 Employments excluded.

**51.12.020 Employments excluded.** The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to

restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in \*RCW 23B.01.400(20) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance agent, insurance broker, or insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and 48.17.030, respectively.

(12) Services performed by a booth renter as defined in RCW 18.16.020. However, a person exempted under this subsection may elect coverage under RCW 51.32.030. [1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020; prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

**\*Reviser's note:** "Public company" is defined in RCW 23B.01.400(21).

**Severability—1991 c 324:** See RCW 18.16.910.

**Effective date—Conflict with federal requirements—1991 c 246:** See notes following RCW 51.08.195.

**Effective dates—Implementation—1982 c 63:** See note following RCW 51.32.095.

**Severability—Effective date—1977 ex.s. c 323:** See notes following RCW 51.04.040.

## Chapter 51.14 SELF-INSURERS

### Sections

51.14.150 School districts, ESDs, public hospital districts, or hospitals as self-insurers—Authorized—Organization—Qualifications.

**51.14.150 School districts, ESDs, public hospital districts, or hospitals as self-insurers—Authorized—Organization—Qualifications.** (1) For the purposes of this section, "hospital" means a hospital as defined in RCW 70.41.020(2) or a psychiatric hospital regulated under chapter 71.12 RCW, but does not include beds utilized by a comprehensive cancer center for cancer research.

(2)(a) Any two or more employers which are school districts or educational service districts, or (b) any two or more employers which are public hospital districts or hospitals, and are owned or operated by a state agency or municipal corporation of this state, or (c) any two or more employers which are hospitals, no one of which is owned or operated by a state agency or municipal corporation of this state, may enter into agreements to form self-insurance groups for the purposes of this chapter.

(3) No more than one group may be formed under subsection (2)(b) of this section and no more than one group may be formed under subsection (2)(c) of this section.

(4) The self-insurance groups shall be organized and operated under rules promulgated by the director under RCW 51.14.160. Such a self-insurance group shall be deemed an employer for the purposes of this chapter, and may qualify as a self-insurer if it meets all the other requirements of this chapter. [1997 c 35 § 1; 1993 c 158 § 1; 1983 c 174 § 2; 1982 c 191 § 7.]

**Effective date—Severability—1982 c 191:** See notes following RCW 28A.315.270.

**Educational service district as self-insurer—Authority:** RCW 28A.310.440.

**School district as self-insurer—Authority:** RCW 28A.320.070.

## Chapter 51.16

### ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

#### Sections

51.16.070 Employer's office record of employment—Unified business identifier account number records—Confidentiality.

**51.16.070 Employer's office record of employment—Unified business identifier account number records—Confidentiality.** (1)(a) Every employer shall keep at his place of business a record of his employment from which the information needed by the department may be obtained and such record shall at all times be open to the inspection of the director, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in RCW 51.48.040.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty under RCW 51.48.030.

(2) Information obtained from employing unit records under the provisions of this title shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but any interested party shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: PROVIDED, That any employing unit may authorize inspection of its records by written consent. [1997 c 54 § 3; 1961 c 23 § 51.16.070. Prior: 1957 c 70 § 48; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

## Chapter 51.32

### COMPENSATION—RIGHT TO AND AMOUNT

#### Sections

51.32.055 Determination of permanent disabilities—Closure of claims by self-insurers.

51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost.

51.32.140 Nonresident alien beneficiary.

**51.32.055 Determination of permanent disabilities—Closure of claims by self-insurers.** (1) One purpose of this title is to restore the injured worker as nearly as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision, except as otherwise authorized in subsection (9) of this section, only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department, except as otherwise authorized in subsection (9) of this section. Either the worker, employer,

or self-insurer may make a request or the inquiry may be initiated by the director or, as authorized in subsection (9) of this section, by the self-insurer on the director or the self-insurer's own motion. Determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or, if the self-insurer has made a request to the department, in the possession of or under the control of the self-insurer shall be forwarded to the director with the request.

(3) A request for determination of permanent disability shall be examined by the department or, if authorized in subsection (9) of this section, the self-insurer, and the department shall issue an order in accordance with RCW 51.52.050 or, in the case of a self-insured employer, the self-insurer may: (a) Enter a written order, communicated to the worker and the department self-insurance section in accordance with subsection (9) of this section, or (b) request the department to issue an order in accordance with RCW 51.52.050.

(4) The department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer, as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of the medical bureau in a manner to be determined by the department.

(6) Where a dispute arises from the handling of any claim before the condition of the injured worker becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7)(a) If a claim (i) is accepted by a self-insurer after June 30, 1986, and before August 1, 1997, (ii) involves only medical treatment and the payment of temporary disability compensation under RCW 51.32.090 or only the payment of temporary disability compensation under RCW 51.32.090, (iii) at the time medical treatment is concluded does not involve permanent disability, (iv) is one with respect to which the department has not intervened under subsection (6) of this section, and (v) the injured worker has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted under this subsection (7) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of a claim under (a) of this subsection, the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you must protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order."

(8)(a) If a claim (i) is accepted by a self-insurer after June 30, 1990, and before August 1, 1997, (ii) involves only medical treatment, (iii) does not involve payment of temporary disability compensation under RCW 51.32.090, and (iv) at the time medical treatment is concluded does not involve permanent disability, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you must protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order."

(b) All determinations of permanent disability for claims accepted under this subsection (8) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(9)(a) If a claim: (i) Is accepted by a self-insurer after July 31, 1997; (ii)(A) involves only medical treatment, or medical treatment and the payment of temporary disability compensation under RCW 51.32.090, and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; or (B) involves only the payment of temporary disability compensation under RCW 51.32.090 and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; (iii) is one with respect to which the department has not intervened under subsection (6) of this section; and (iv) concerns an injured worker who has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) If a physician submits a report to the self-insurer that concludes that the worker's condition is fixed and stable and supports payment of a permanent partial disability

award, and if within fourteen days from the date the self-insurer mailed the report to the attending or treating physician, the worker's attending or treating physician disagrees in writing that the worker's condition is fixed and stable, the self-insurer must get a supplemental medical opinion from a provider on the department's approved examiner's list before closing the claim. In the alternative, the self-insurer may forward the claim to the department, which must review the claim and enter a final order as provided for in RCW 51.52.050.

(c) Upon closure of a claim under this subsection (9), the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with such medical benefits and temporary disability compensation as provided to date and with such award for permanent partial disability, if any, as set forth below, and with the condition that you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits, temporary disability compensation provided, or permanent partial disability that has been awarded, you must protest in writing to the Department of Labor and Industries, Self-Insurance Section, within sixty days of the date you received this order. If you do not protest this order to the department, this order will become final."

(d) All determinations of permanent partial disability for claims accepted by self-insurers under this subsection (9) may be made by the self-insurer or the self-insurer may request a determination by the self-insured section of the department. All determinations shall be made under subsections (1) through (4) of this section.

(10) If the department receives a protest of an order issued by a self-insurer under subsections (7) through (9) of this section, the self-insurer's closure order must be held in abeyance. The department shall review the claim closure action and enter a further determinative order as provided for in RCW 51.52.050. If no protest is timely filed, the closing order issued by the self-insurer shall become final and shall have the same force and effect as a department order that has become final under RCW 51.52.050.

(11) If within two years of claim closure under subsections (7) through (9) of this section, the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits paid or payable. This subsection (11) does not limit in any way the application of RCW 51.32.240.

(12) For the purposes of this section, "comparable wages and benefits" means wages and benefits that are at least ninety-five percent of the wages and benefits received by the worker at the time of injury. [1997 c 416 § 1; 1994 c 97 § 1; 1988 c 161 § 13; 1986 c 55 § 1; 1981 c 326 § 1; 1977 ex.s. c 350 § 43; 1971 ex.s. c 289 § 46.]

**Report to the legislature—1997 c 416:** "The department of labor and industries shall review the permanent partial disability claims closure activity by self-insured employers authorized under RCW 51.32.055(9) through at least June 30, 1999. The department must also review the claims

closure activity by the self-insured section of the department for the same period. The review of these activities must include the number and types of claims closed, protested, reconsidered, and appealed, and the results of such activities, including the results of injured worker satisfaction surveys conducted by the department. The department must report on its review to the appropriate committees of the legislature no later than January 1, 2000." [1997 c 416 § 2.]

**Effective date—Applicability—1986 c 55 § 1:** "Section 1 of this act shall take effect July 1, 1986, and shall apply to claims accepted after June 30, 1986." [1986 c 55 § 4.]

**Effective dates—Severability—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

**51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost.** (1) Any worker entitled to receive any benefits or claiming such under this title shall, if requested by the department or self-insurer, submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the worker and as may be provided by the rules of the department. An injured worker, whether an alien or other injured worker, who is not residing in the United States at the time that a medical examination is requested may be required to submit to an examination at any location in the United States determined by the department or self-insurer.

(2) If the worker refuses to submit to medical examination, or obstructs the same, or, if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery or refuse or obstruct evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or the self-insurer upon approval by the department, with notice to the worker may suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period: PROVIDED, That the department or the self-insurer shall not suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if a worker has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section.

(3) If the worker necessarily incurs traveling expenses in attending the examination pursuant to the request of the department, such traveling expenses shall be repaid to him or her out of the accident fund upon proper voucher and audit or shall be repaid by the self-insurer, as the case may be.

(4)(a) If the medical examination required by this section causes the worker to be absent from his or her work without pay:

(i) In the case of a worker insured by the department, the worker shall be paid compensation out of the accident fund in an amount equal to his or her usual wages for the time lost from work while attending the medical examination; or

(ii) In the case of a worker of a self-insurer, the self-insurer shall pay the worker an amount equal to his or her usual wages for the time lost from work while attending the medical examination.

(b) This subsection (4) shall apply prospectively to all claims regardless of the date of injury. [1997 c 325 § 3; 1993 c 375 § 1; 1980 c 14 § 11. Prior: 1977 ex.s. c 350 § 50; 1977 ex.s. c 323 § 17; 1971 ex.s. c 289 § 13; 1961 c 23 § 51.32.110; prior: 1917 c 28 § 18; 1915 c 188 § 5; 1911 c 74 § 13; RRS § 7688.]

**Severability—Effective date—1977 ex.s. c 323:** See notes following RCW 51.04.040.

**Effective dates—Severability—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

**51.32.140 Nonresident alien beneficiary.** Except as otherwise provided by treaty or this title, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, the department or self-insurer, as the case may be, shall pay the compensation to which a resident beneficiary is entitled under this title. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he or she shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due. [1997 c 325 § 5; 1971 ex.s. c 289 § 45; 1961 c 23 § 51.32.140. Prior: 1957 c 70 § 36; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

**Effective dates—Severability—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

**Chapter 51.36  
MEDICAL AID**

Sections

51.36.130 False, misleading, or deceptive advertising or representations by health care providers.

**51.36.130 False, misleading, or deceptive advertising or representations by health care providers.** In addition to other authority granted under this chapter, the department may deny applications of health care providers to participate as a provider of services to injured workers under this title, or terminate or suspend providers' eligibility to participate, if the provider uses or causes or promotes the use of, advertising matter, promotional materials, or other representation, however disseminated or published, that is false, misleading, or deceptive with respect to the industrial insurance system or benefits for injured workers under this title. [1997 c 336 § 2.]

**Chapter 51.44  
FUNDS**

Sections

51.44.170 Industrial insurance premium refund account.

**51.44.170 Industrial insurance premium refund account.** The industrial insurance premium refund account is created in the custody of the state treasurer. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account. Only the executive head of the agency or institution of higher education, or designee, may authorize expenditures from the account. No agency or institution of higher education may make an expenditure from the account for an amount greater than the refund earned by the agency. If the agency or institution of higher education has staff dedicated to workers' compensation claims management, expenditures from the account must be used to pay for that staff, but additional expenditure from the account may be used for any program within an agency or institution of higher education that promotes or provides incentives for employee workplace safety and health and early, appropriate return-to-work for injured employees. [1997 c 327 § 1; 1991 sp.s. c 13 § 29; 1990 c 204 § 2.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Findings—Purpose—1990 c 204:** "The legislature finds that workplace safety in state employment is of paramount importance in maintaining a productive and committed state work force. The legislature also finds that recognition in state agencies and institutions of higher education of industrial insurance programs that provide safe working environments and promote early return-to-work for injured employees will encourage agencies and institutions of higher education to develop these programs. A purpose of this act is to provide incentives for agencies and institutions of higher education to participate in industrial insurance safety programs and return-to-work programs by authorizing use of the industrial insurance premium refunds earned by agencies or institutions of higher education participating in industrial insurance retrospective rating programs. Since agency and institution of higher education retrospective rating refunds are generated from safety performance and cannot be set at predictable levels determined by the budget process, the incentive awards should not impact an agency's or institution of higher education's legislatively approved budget." [1997 c 327 § 2; 1990 c 204 § 1.]

**Effective date—1990 c 204 § 2:** "Section 2 of this act shall take effect July 1, 1990." [1990 c 204 § 6.]

**Chapter 51.48  
PENALTIES**

Sections

51.48.015 Repealed.  
51.48.020 Employer's misrepresentation or failure to secure payment of compensation or to report payroll or employee hours—False information by person claiming benefits—Penalties.  
51.48.280 Offering, soliciting, or receiving kickback, bribe, or rebate—Charging representation fee while providing health care services—Criminal liability—Exceptions.

**51.48.015 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**51.48.020 Employer's misrepresentation or failure to secure payment of compensation or to report payroll or employee hours—False information by person claiming benefits—Penalties.** (1)(a) Any employer, who knowingly misrepresents to the department the amount of his or

her payroll or employee hours upon which the premium under this title is based, shall be liable to the state for up to ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(b) An employer is guilty of a class C felony, if:

(i) The employer, with intent to evade determination and payment of the correct amount of the premiums, knowingly makes misrepresentations regarding payroll or employee hours; or

(ii) The employer engages in employment covered under this title and, with intent to evade determination and payment of the correct amount of the premiums, knowingly fails to secure payment of compensation under this title or knowingly fails to report the payroll or employee hours related to that employment.

(c) Upon conviction under (b) of this subsection, the employer shall be ordered by the court to pay the premium due and owing, a penalty in the amount of one hundred percent of the premium due and owing, and interest on the premium and penalty from the time the premium was due until the date of payment. The court shall:

(i) Collect the premium and interest and transmit it to the department of labor and industries; and

(ii) Collect the penalty and disburse it pro rata as follows: One-third to the investigative agencies involved; one-third to the prosecuting authority; and one-third to the general fund of the county in which the matter was prosecuted.

Payments collected under this subsection must be applied until satisfaction of the obligation in the following order: Premium payments; penalty; and interest.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. [1997 c 324 § 1; 1995 c 160 § 4; 1987 c 221 § 1; 1977 ex.s. c 323 § 22; 1971 ex.s. c 289 § 63; 1961 c 23 § 51.48.020. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

**Severability—Effective date—1977 ex.s. c 323:** See notes following RCW 51.04.040.

**Effective dates—Severability—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

**51.48.280 Offering, soliciting, or receiving kickback, bribe, or rebate—Charging representation fee while providing health care services—Criminal liability—Exceptions.** (1) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, 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. However, 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, firm, corporation, partnership, association, agency, institution, or other legal entity, 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. However, 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) A health services provider who (a) provides a health care service to a claimant, while acting as the claimant's representative for the purpose of obtaining authorization for the services, and (b) charges a percentage of the claimant's benefits or other fee for acting as the claimant's representative under this title shall be guilty of a gross misdemeanor. However, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(4) 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.

(5) 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. [1997 c 336 § 1; 1986 c 200 § 6.]

## Chapter 51.52 APPEALS

### Sections

51.52.200 Exception—Employers as parties to actions relating to compensation or assistance for victims of crimes.

**51.52.200 Exception—Employers as parties to actions relating to compensation or assistance for victims of crimes.** This chapter shall not apply to matters concerning employers as parties to any settlement, appeal, or other action in accordance with chapter 7.68 RCW. [1997 c 102 § 2.]



Title 52
FIRE PROTECTION DISTRICTS

Chapters

52.14 Commissioners.

Chapter 52.14
COMMISSIONERS

Sections

52.14.017 Decrease from five to three commissioners—Election—Disposition of commissioner districts.

52.14.017 Decrease from five to three commissioners—Election—Disposition of commissioner districts. Except as provided in RCW 52.14.020, in the event a five-member board of commissioners of any fire protection district determines by resolution that it would be in the best interest of the fire district to decrease the number of commissioners from five to three, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such a decrease in the number of commissioners of the district, the board shall submit a resolution to the county legislative authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of . . . . . county fire protection district no. . . . be decreased from five members to three members?

Yes . . .
No . . .

If the fire protection district has commissioner districts, the commissioners of the district must pass a resolution, before the submission of the proposition to the voters, to either redistrict from five commissioner districts to three commissioner districts or eliminate the commissioner districts. The resolution takes effect upon approval of the proposition by the voters.

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be decreased to three members. The two members shall be decreased in accordance with RCW 52.06.085. [1997 c 43 § 1.]

Title 53
PORT DISTRICTS

Chapters

53.04 Formation.
53.08 Powers.
53.36 Finances.

Chapter 53.04
FORMATION

Sections

53.04.023 Formation of less than county-wide district.

53.04.023 Formation of less than county-wide district. A less than county-wide port district with an assessed valuation of at least one hundred fifty million dollars may be created in a county that already has a less than county-wide port district located within its boundaries. Except as provided in this section, such a port district shall be created in accordance with the procedure to create a county-wide port district.

The effort to create such a port district is initiated by the filing of a petition with the county auditor calling for the creation of such a port district, describing the boundaries of the proposed port district, designating either three or five commissioner positions, describing commissioner districts if the petitioners propose that the commissioners represent districts, and providing a name for the proposed port district. The petition must be signed by voters residing within the proposed port district equal in number to at least ten percent of such voters who voted at the last county general election.

A public hearing on creation of the proposed port district shall be held by the county legislative authority if the county auditor certifies that the petition contained sufficient valid signatures. Notice of the public hearing must be published in the county's official newspaper at least ten days prior to the date of the public hearing. After taking testimony, the county legislative authority may make changes in the boundaries of the proposed port district if it finds that such changes are in the public interest and shall determine if the creation of the port district is in the public interest. No area may be added to the boundaries unless a subsequent public hearing is held on the proposed port district.

The county legislative authority shall submit a ballot proposition authorizing the creation of the proposed port district to the voters of the proposed port district, at any special election date provided in RCW 29.13.020, if it finds the creation of the port district to be in the public interest.

The port district shall be created if a majority of the voters voting on the ballot proposition favor the creation of the port district. The initial port commissioners shall be elected at the same election, from districts or at large, as provided in the petition initiating the creation of the port district. The election shall be otherwise conducted as provided in RCW 53.12.172, but the election of commissioners shall be null and void if the port district is not created. [1997 c 256 § 1; 1994 c 223 § 84; 1993 c 70 § 1; 1992 c 147 § 2.]

Effective date—1997 c 256: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 1997]." [1997 c 256 § 2.]

Severability—1992 c 147: See note following RCW 53.04.020.

## Chapter 53.08

## POWERS

## Sections

53.08.043 Powers relative to systems of sewerage.

**53.08.043 Powers relative to systems of sewerage.**

A port district may exercise all the powers relating to systems of sewerage authorized by RCW 35.67.010 and 35.67.020 for cities and towns. [1997 c 447 § 15.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

## Chapter 53.36

## FINANCES

## Sections

53.36.050 County treasurer—General and special funds—  
Depositories—Investment of excess funds.

**53.36.050 County treasurer—General and special funds—Depositories—Investment of excess funds.** The county treasurer acting as port treasurer shall create a fund to be known as the "Port of . . . . . Fund," into which shall be paid all money received by him from the collection of taxes in behalf of such port district, and shall also maintain such other special funds as may be created by the port commission into which shall be placed such moneys as the port commission may by its resolution direct. All such port funds shall be deposited with the county depositories under the same restrictions, contracts and security as is provided by statute for county depositories and all interest collected on such port funds shall belong to such port district and shall be deposited to its credit in the proper port funds: PROVIDED, That any portion of such port moneys determined by the port commission to be in excess of the current needs of the port district may be invested by the county treasurer in accordance with RCW 36.29.020, 36.29.022, and chapter 39.59 RCW, and all interest collected thereon shall likewise belong to such port district and shall be deposited to its credit in the proper port funds. [1997 c 393 § 10; 1959 c 52 § 2; 1921 c 179 § 3; 1911 c 92 § 13; RRS § 9700.]

*County depositories: Chapter 36.48 RCW.*

## Title 54

## PUBLIC UTILITY DISTRICTS

## Chapters

- 54.12 Commissioners.**  
**54.44 Nuclear, thermal, electric generating power facilities—Joint development.**

## Chapter 54.12

## COMMISSIONERS

## Sections

54.12.080 Compensation and expenses—Waiver of compensation—  
Group insurance.

**54.12.080 Compensation and expenses—Waiver of compensation—Group insurance.** (1) Commissioners of public utility districts are eligible to receive salaries as follows:

(a) Each public utility district commissioner of a district operating utility properties shall receive a salary of one thousand dollars per month during a calendar year if the district received total gross revenue of over fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to thirteen hundred dollars per month.

(b) Each public utility district commissioner of a district operating utility properties shall receive a salary of seven hundred dollars per month during a calendar year if the district received total gross revenue of from two million dollars to fifteen million dollars during the fiscal year ending June 30th before the calendar year. However, the board of commissioners of such a public utility district may pass a resolution increasing the rate of salary up to nine hundred dollars per month.

(c) Commissioners of other districts shall serve without salary. However, the board of commissioners of such a public utility district may pass a resolution providing for salaries not exceeding four hundred dollars per month for each commissioner.

(2) In addition to salary, all districts may provide by resolution for the payment of per diem compensation to each commissioner at a rate not exceeding fifty dollars for each day or major part thereof devoted to the business of the district, and days upon which he attends meetings of the commission of his district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such compensation paid during any one year to a commissioner shall not exceed seven thousand dollars. Per diem compensation shall not be paid for services of a ministerial or professional nature.

(3) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(4) Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his subsistence and lodging and travel while away from his place of residence.

(5) Any district providing group insurance for its employees, covering them, their immediate family and dependents, may provide insurance for its commissioner with the same coverage. [1997 c 28 § 1; 1985 c 330 § 4; 1977 ex.s. c 157 § 1; 1969 c 106 § 5; 1967 c 161 § 1; 1957 c 140 § 2; 1955 c 124 § 5; 1951 c 207 § 4. Prior: (i) 1931 c 1 § 8, part; RRS § 11612, part. (ii) 1941 c 245 § 6; Rem. Supp. 1941 § 11616-5.]

**Construction—Severability—1969 c 106:** See notes following RCW 54.08.041.

*Group employee insurance: RCW 54.04.050.*

*Hospitalization and medical insurance not deemed additional compensation:  
RCW 41.04.190.*

### Chapter 54.44

## NUCLEAR, THERMAL, ELECTRIC GENERATING POWER FACILITIES—JOINT DEVELOPMENT

#### Sections

54.44.020 Authority to participate in and enter into agreements for operation of common facilities—Percentage of ownership—Expenses—Taxes—Payments.

#### 54.44.020 Authority to participate in and enter into agreements for operation of common facilities—Percentage of ownership—Expenses—Taxes—Payments.

(1) Except as provided in subsection (2) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, any such cities and public utility districts which operate electric generating facilities or distribution systems and any joint operating agency shall have power and authority to participate and enter into agreements with each other and with electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the public utility commissioner of Oregon, hereinafter called "regulated utilities", and with rural electric cooperatives, including generation and transmission cooperatives for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, hereinafter called "common facilities", and for the planning, financing, acquisition, construction, operation and maintenance thereof. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

(2) Cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, shall have the power and authority to participate and enter into agreements for the undivided ownership of a coal-fired thermal electric generating plant and facility placed in operation before July 1, 1975, including related common facilities, and for the planning, financing, acquisition, construction, operation, and maintenance of the plant and facility. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by the city, district, or agency, for the acquisition and construction of the facility and shall own and control a like percentage of the electrical output thereof. Cities of the first class, public utility districts, and joint operating agencies may enter into agreements under this subsection with each other, with regulated utilities, with rural electric cooperatives, with electric companies subject to the

jurisdiction of the regulatory commission of any other state, and with any power marketer subject to the jurisdiction of the federal energy regulatory commission.

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

(4) Each city, public utility district, joint operating agency, regulated utility, and cooperatives participating in the ownership or operation of a common facility shall pay all taxes chargeable to its share of the common facility and the electric energy generated thereby under applicable statutes as now or hereafter in effect, and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, pursuant to agreement with such county or taxing district. [1997 c 230 § 2; 1975-'76 2nd ex.s. c 72 § 2; 1974 ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 2; 1967 c 159 § 2.]

**Severability—1975-'76 2nd ex.s. c 72:** See note following RCW 54.44.010.

## Title 56

### SEWER DISTRICTS

#### Chapters

**56.08 Powers—Comprehensive plan.**

#### Chapter 56.08

### POWERS—COMPREHENSIVE PLAN

#### Sections

56.08.070 Repealed.

**56.08.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Title 57

### WATER DISTRICTS

#### Chapters

**57.04 Formation and dissolution.**

**57.08 Powers.**

**57.16 Comprehensive plan—Local improvement districts.**

#### Chapter 57.04

### FORMATION AND DISSOLUTION

## Sections

57.04.140 Formation—Alternative method—New development.

**57.04.140 Formation—Alternative method—New development.** (1) As an alternative means to forming a water-sewer district, a county legislative authority may authorize the formation of a water-sewer district to serve a new development that at the time of formation does not have any residents, at written request of sixty percent of the owners of the area to be included in the proposed district. The county legislative authority shall review the proposed district according to the procedures and criteria in RCW 57.02.040.

(2) The county legislative authority shall appoint the initial water-sewer commissioners of the district. The commissioners shall serve until seventy-five percent of the development is sold and occupied, or until some other time as specified by the county legislative authority when the district is approved. Commissioners serving under this section are not entitled to any form of compensation from the district.

(3) New commissioners shall be elected according to the procedures in chapter 57.12 RCW at the next election held under RCW 29.13.010 that follows more than ninety days after the date seventy-five percent of the development is sold and occupied, or after the time specified by the county legislative authority when the district is approved.

(4) A water-sewer district created under this section may be transferred to a city or county, or dissolved if the district is inactive, by order of the county legislative authority at the written request of sixty percent of the owners of the area included in the district. [1997 c 447 § 4.]

**Finding—Purpose—Construction—1997 c 447:** See notes following RCW 70.05.074.

## Chapter 57.08 POWERS

## Sections

57.08.005 Powers.  
57.08.050 Contracts for materials and work—Small works roster—Notice—Bids—Requirements waived, when.  
57.08.065 Powers as to mutual systems—Overlapping districts—Operation of system of sewerage by former water district.  
57.08.081 Rates and charges—Delinquencies.

**57.08.005 Powers.** A district shall have the following powers:

(1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;

(2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;

(3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer. District waterworks may include facilities which result in combined water supply and electric generation, if the electricity generated thereby is a byproduct of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution. For the purposes of waterworks which include facilities for the generation of electricity as a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner;

(4) To purchase and take water from any municipal corporation, private person, or entity. A district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are

directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater and for the protection, preservation, and rehabilitation of surface and underground waters, facilities for the drainage and treatment of storm or surface waters, public highways, streets, and roads with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewage facilities may include facilities which result in combined sewage disposal, treatment, or drainage and electric generation, except that the electricity generated thereby is a byproduct of the system of sewers. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a byproduct when the electrical generation is subordinate to the primary purpose of sewage disposal, treatment, or drainage. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such sewer pipe. A district may erect sewage treatment plants within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities that result in combined sewage disposal, treatment, or drainage and electric generation where the electric generation is a byproduct, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(6) To construct, condemn, acquire, and own buildings and other necessary district facilities;

(7) To compel all property owners within the district located within an area served by the district's system of sewers to connect their private drain and sewer systems with the district's system under such penalty as the commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served;

(8) Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, ground water as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue general obligation bonds, revenue bonds, local im-

provement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

(9) To fix rates and charges for water, sewer, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants. The connection charge may include interest charges applied from the date of construction of the system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the system, or at the time of installation of the lines to which the property owner is seeking to connect. A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Those fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A water-sewer district shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using water-sewer district employees unless the on-site system is connected by a publicly owned collection system to the water-sewer district's sewerage system, and the on-site system represents the first step in the sewage disposal process.

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and

charges for sewer, water, storm water control, drainage, and street lighting facilities to the same extent private persons and private property are subject to those rates and charges that are imposed by districts. In setting those rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(10) To contract with individuals, associations and corporations, the state of Washington, and the United States;

(11) To employ such persons as are needed to carry out the district's purposes and fix salaries and any bond requirements for those employees;

(12) To contract for the provision of engineering, legal, and other professional services as in the board of commissioner's discretion is necessary in carrying out their duties;

(13) To sue and be sued;

(14) To loan and borrow funds and to issue bonds and instruments evidencing indebtedness under chapter 57.20 RCW and other applicable laws;

(15) To transfer funds, real or personal property, property interests, or services subject to RCW 57.08.015;

(16) To levy taxes in accordance with this chapter and chapters 57.04 and 57.20 RCW;

(17) To provide for making local improvements and to levy and collect special assessments on property benefitted thereby, and for paying for the same or any portion thereof in accordance with chapter 57.16 RCW;

(18) To establish street lighting systems under RCW 57.08.060;

(19) To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

(20) To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for water-works and systems of sewerage and drainage. [1997 c 447 § 16; 1996 c 230 § 301.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**57.08.050 Contracts for materials and work—Small works roster—Notice—Bids—Requirements waived, when.** (1) All work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor using the small works roster process provided in RCW 39.04.155. The board of commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be

sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. However, no contract shall be let in excess of the cost of the materials or work. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ten thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of from five thousand dollars to less than fifty thousand dollars shall be made using the process provided in RCW 39.04.155 or by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(3) In the event of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board of commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board or official acting for

the board may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation. [1997 c 245 § 4. Prior: 1996 c 230 § 311; 1996 c 18 § 14; 1994 c 31 § 2; prior: 1993 c 198 § 21; 1993 c 45 § 8; 1989 c 105 § 2; 1987 c 309 § 2; 1985 c 154 § 2; 1983 c 38 § 2; 1979 ex.s. c 137 § 2; 1975 1st ex.s. c 64 § 2; 1965 c 72 § 1; 1947 c 216 § 2; 1929 c 114 § 21; Rem. Supp. 1947 § 11598. Cf. 1913 c 161 § 20.]

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**57.08.065 Powers as to mutual systems—Overlapping districts—Operation of system of sewerage by former water district.** (1) A district shall have power to establish, maintain, and operate a mutual water, sewerage, drainage, and street lighting system, a mutual system of any two or three of the systems, or separate systems.

(2) Where any two or more districts include the same territory as of July 1, 1997, none of the overlapping districts may provide any service that was made available by any of the other districts prior to July 1, 1997, within the overlapping territory without the consent by resolution of the board of commissioners of the other district or districts.

(3) A district that was a water district prior to July 1, 1997, that did not operate a system of sewerage prior to July 1, 1997, may not proceed to exercise the powers to establish, maintain, construct, and operate any system of sewerage without first obtaining written approval and certification of necessity from the department of ecology and department of health. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof proposed by a district that was a water district prior to July 1, 1997, shall be approved by the same county and state officials as were required to approve such plans adopted by a sewer district immediately prior to July 1, 1997, and as subsequently may be required. [1997 c 447 § 17; 1996 c 230 § 313; 1981 c 45 § 11; 1979 c 141 § 69; 1967 ex.s. c 135 § 3; 1963 c 111 § 1.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Legislative declaration—"District" defined—Severability—1981 c 45:** See notes following RCW 36.93.090.

**57.08.081 Rates and charges—Delinquencies.** The commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners, so that uniform charges will be made for the same class of customer or service and facility. Rates and charges may be combined for the furnishing of more than one type of sewer service and facility such as but not limited to storm or surface water and sanitary.

In classifying customers of such water, sewer, or drainage system, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost to various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system.

The commissioners shall enforce collection of connection charges, and rates and charges for water supplied against property owners connecting with the system or receiving such water, and for sewer and drainage services charged against property to which and its owners to whom the service is available, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either connection charges or rates and charges for services supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than the prime lending rate of the district's bank plus four percentage points per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes.

The district may, at any time after the connection charges or rates and charges for services supplied or available and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, attorneys' fees, title search and report costs, and expenses as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual or against all of those who are delinquent in one action. The laws and rules of the court shall control as in other civil actions.

In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of sixty days. [1997 c 447 § 19; 1996 c 230 § 314.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

*Assessments and charges against state lands: Chapter 79.44 RCW.*



## Chapter 57.16

COMPREHENSIVE PLAN—LOCAL  
IMPROVEMENT DISTRICTS

## Sections

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments.

**57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments.** Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide. A district may prepare a separate general comprehensive plan for each of these services and other services that districts are permitted to provide, or the district may combine any or all of its comprehensive plans into a single general comprehensive plan.

(1) For a general comprehensive plan of a water supply system, the commissioners shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine, and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters, and water rights and easements necessary therefor, and for retaining and storing any such waters, and erecting dams, reservoirs, aqueducts, and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district. The commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and a long-term plan for financing the planned projects and the method of distributing the cost and expense thereof, including the creation of local improvement districts or utility local improvement districts, and shall determine whether the whole or part of the cost and expenses shall be paid from revenue or general obligation bonds.

(2) For a general comprehensive plan for a sewer system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a sewer system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods and services, if any, for the prevention, control, and reduction of water pollution and for the treatment and disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations or other sewage collection facilities, septic tanks, septic tank systems or drainfields, and

systems for the transmission and treatment of wastewater. The general comprehensive plan shall provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the sewer system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(3) For a general comprehensive plan for a drainage system, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for a drainage system for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system to collect, treat, and dispose of storm water or surface waters, including use of natural systems and the construction or provision of culverts, storm water pipes, ponds, and other systems. The general comprehensive plan shall provide for a long-term plan for financing the planned projects and provide for a method of distributing the cost and expense of the drainage system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(4) For a general comprehensive plan for street lighting, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for street lighting for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system or systems of street lighting, provide for a long-term plan for financing the planned projects, and provide for a method of distributing the cost and expense of the street lighting system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(5) The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

(6) Any general comprehensive plan or plans shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health, except that a comprehensive plan relating to street lighting shall not be submitted to or approved by the director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health and by the designated engineer within sixty days of their respective receipt of the plan. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of the county legislative authori-

ties pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of districts. The resolution, ordinance, or motion of the legislative body that rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authorities of the cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town legislative authority may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the commissioners and the city or town legislative authority may mutually agree to an extension of the deadlines in this section.

Before becoming effective, the general comprehensive plan shall be approved by any state agency whose approval may be required by applicable law. Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan. However, only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town governing body. [1997 c 447 § 18; 1996 c 230 § 501; 1990 1st ex.s. c 17 § 35; 1989 c 389 § 10; 1982 c 213 § 2; 1979 c 23 § 2; 1977 ex.s. c 299 § 3; 1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c 128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

## Title 58 BOUNDARIES AND PLATS

### Chapters

#### 58.08 Plats—Recording.

### Chapter 58.08

## PLATS—RECORDING

### Sections

58.08.040 Deposit to cover anticipated taxes and assessments.

**58.08.040 Deposit to cover anticipated taxes and assessments.** Prior to any person recording a plat, replat, altered plat, or binding site plan subsequent to May 31st in any year and prior to the date of the collection of taxes in the ensuing year, the person shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the property less improvements in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt shall be evidence of the payment. The treasurer shall appropriate so much of the deposit as will pay the taxes and assessments on the property when the levy rates are certified by the assessor using the value of the property at the time of filing a plat, replat, altered plat, or binding site plan, and in case the sum deposited is in excess of the amount necessary for the payment of the taxes and assessments, the treasurer shall return, to the party depositing, the amount of excess. [1997 c 393 § 11; 1994 c 301 § 16; 1991 c 245 § 14; 1989 c 378 § 2; 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.

## Title 59 LANDLORD AND TENANT

### Chapters

#### 59.18 Residential Landlord-Tenant Act.

#### 59.20 Mobile Home Landlord-Tenant Act.

### Chapter 59.18

## RESIDENTIAL LANDLORD-TENANT ACT

### Sections

59.18.055 Notice—Alternative procedure—Court's jurisdiction limited—Application to chapter 59.20 RCW.  
59.18.063 Landlord—Provide written receipt upon request.

- 59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond.
- 59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require.

**59.18.055 Notice—Alternative procedure—Court's jurisdiction limited—Application to chapter 59.20 RCW.**

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

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

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

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

(2) This section shall apply to this chapter and chapter 59.20 RCW. [1997 c 86 § 1; 1989 c 342 § 14.]

**59.18.063 Landlord—Provide written receipt upon request.** A landlord shall provide, upon the request of a tenant, a written receipt for any payments made by the tenant. [1997 c 84 § 1.]

**59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond.** (1) The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her 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 the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the 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 or her 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 the bond before the bond shall be approved by the clerk. After the issuance of a writ of restitution, acceptance of a payment by the landlord or plaintiff that only partially satisfies the judgment will not invalidate the writ unless pursuant to a written agreement executed by both parties. The eviction will not be postponed or stopped unless a copy of that written agreement is provided to the sheriff. It is the responsibility of the tenant or defendant to ensure a copy of the agreement is provided to the sheriff. Upon receipt of the agreement the sheriff will cease action unless ordered to do otherwise by the court. The writ of restitution and the notice that accompanies the writ of restitution required under RCW 59.18.312 shall conspicuously state in bold face type, all capitals, not less than twelve points information about partial payments as set forth in subsection (2) of this section. If the writ of restitution has been based upon a finding by the court that the tenant, subtenant, sublessee, or a person residing at the rental premises has engaged in drug-related activity or has allowed any other person to engage in drug-related activity at those premises with his or her knowledge or approval, neither the tenant, the defendant, nor a person in possession of the premises shall be entitled to post a bond in order to retain possession of the premises. The writ may be served by the sheriff, in the event he or she shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of the writ in a conspicuous place upon the premises: PROVIDED, That the sheriff shall not require any bond for the service or execution of the writ. The sheriff shall be immune from all civil liability for serving and enforcing writs of restitution unless the sheriff is grossly negligent in carrying out his or her duty.

(2) The notice accompanying a writ of restitution required under RCW 59.18.312 shall be substantially similar to the following:

**IMPORTANT NOTICE - PARTIAL PAYMENTS**

**YOUR LANDLORD'S ACCEPTANCE OF A PARTIAL PAYMENT FROM YOU AFTER SERVICE OF THIS WRIT OF RESTITUTION WILL NOT AUTOMATICALLY POSTPONE OR STOP YOUR EVICTION. IF YOU HAVE A WRITTEN AGREEMENT WITH YOUR LANDLORD THAT THE EVICTION WILL BE POSTPONED OR STOPPED, IT IS YOUR RESPONSIBILITY TO PROVIDE A COPY OF THE AGREEMENT TO THE SHERIFF. THE SHERIFF WILL NOT CEASE ACTION UNLESS YOU PROVIDE A COPY OF THE AGREEMENT. AT THE DIRECTION OF THE COURT THE SHERIFF MAY TAKE FURTHER ACTION.**

[1997 c 255 § 1; 1989 c 342 § 11; 1988 c 150 § 3; 1973 1st ex.s. c 207 § 40.]

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

**59.18.440 Relocation assistance for low-income tenants—Certain cities, towns, counties, municipal corporations authorized to require.** (1) Any city, town, county, or municipal corporation that is required to develop a comprehensive plan under RCW 36.70A.040(1) is autho-

rized to require, after reasonable notice to the public and a public hearing, property owners to provide their portion of reasonable relocation assistance to low-income tenants upon the demolition, substantial rehabilitation whether due to code enforcement or any other reason, or change of use of residential property, or upon the removal of use restrictions in an assisted-housing development. No city, town, county, or municipal corporation may require property owners to provide relocation assistance to low-income tenants, as defined in this chapter, upon the demolition, substantial rehabilitation, upon the change of use of residential property, or upon the removal of use restrictions in an assisted-housing development, except as expressly authorized herein or when authorized or required by state or federal law. As used in this section, "assisted housing development" means a multifamily rental housing development that either receives government assistance and is defined as federally assisted housing in RCW 59.28.020, or that receives other federal, state, or local government assistance and is subject to use restrictions.

(2) As used in this section, "low-income tenants" means tenants whose combined total income per dwelling unit is at or below fifty percent of the median income, adjusted for family size, in the county where the tenants reside.

The department of community, trade, and economic development shall adopt rules defining county median income in accordance with the definitions promulgated by the federal department of housing and urban development.

(3) A requirement that property owners provide relocation assistance shall include the amounts of such assistance to be provided to low-income tenants. In determining such amounts, the jurisdiction imposing the requirement shall evaluate, and receive public testimony on, what relocation expenses displaced tenants would reasonably incur in that jurisdiction including:

- (a) Actual physical moving costs and expenses;
- (b) Advance payments required for moving into a new residence such as the cost of first and last month's rent and security and damage deposits;
- (c) Utility connection fees and deposits; and
- (d) Anticipated additional rent and utility costs in the residence for one year after relocation.

(4)(a) Relocation assistance provided to low-income tenants under this section shall not exceed two thousand dollars for each dwelling unit displaced by actions of the property owner under subsection (1) of this section. A city, town, county, or municipal corporation may make future annual adjustments to the maximum amount of relocation assistance required under this subsection in order to reflect any changes in the housing component of the consumer price index as published by the United States department of labor, bureau of labor statistics.

(b) The property owner's portion of any relocation assistance provided to low-income tenants under this section shall not exceed one-half of the required relocation assistance under (a) of this subsection in cash or services.

(c) The portion of relocation assistance not covered by the property owner under (b) of this subsection shall be paid by the city, town, county, or municipal corporation authorized to require relocation assistance under subsection (1) of this section. The relocation assistance may be paid from

proceeds collected from the excise tax imposed under RCW 82.46.010.

(5) A city, town, county, or municipal corporation requiring the provision of relocation assistance under this section shall adopt policies, procedures, or regulations to implement such requirement. Such policies, procedures, or regulations shall include provisions for administrative hearings to resolve disputes between tenants and property owners relating to relocation assistance or unlawful detainer actions during relocation, and shall require a decision within thirty days of a request for a hearing by either a tenant or property owner.

Judicial review of an administrative hearing decision relating to relocation assistance may be had by filing a petition, within ten days of the decision, in the superior court in the county where the residential property is located. Judicial review shall be confined to the record of the administrative hearing and the court may reverse the decision only if the administrative findings, inferences, conclusions, or decision is:

- (a) In violation of constitutional provisions;
- (b) In excess of the authority or jurisdiction of the administrative hearing officer;
- (c) Made upon unlawful procedure or otherwise is contrary to law; or
- (d) Arbitrary and capricious.

(6) Any city, town, county, or municipal corporation may require relocation assistance, under the terms of this section, for otherwise eligible tenants whose living arrangements are exempted from the provisions of this chapter under RCW 59.18.040(3) and if the living arrangement is considered to be a rental or lease not defined as a retail sale under RCW 82.04.050.

(7)(a) Persons who move from a dwelling unit prior to the application by the owner of the dwelling unit for any governmental permit necessary for the demolition, substantial rehabilitation, or change of use of residential property or prior to any notification or filing required for condominium conversion shall not be entitled to the assistance authorized by this section.

(b) Persons who move into a dwelling unit after the application for any necessary governmental permit or after any required condominium conversion notification or filing shall not be entitled to the assistance authorized by this section if such persons receive written notice from the property owner prior to taking possession of the dwelling unit that specifically describes the activity or condition that may result in their temporary or permanent displacement and advises them of their ineligibility for relocation assistance. [1997 c 452 § 17; 1995 c 399 § 151; 1990 1st ex.s. c 17 § 49.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

## Chapter 59.20

## MOBILE HOME LANDLORD-TENANT ACT

## Sections

59.20.040 Chapter applies to rental agreements regarding mobile home lots, cooperatives, or subdivisions—Applicability of and construction with provisions of chapters 59.12 and 59.18 RCW.

**59.20.040 Chapter applies to rental agreements regarding mobile home lots, cooperatives, or subdivisions—Applicability of and construction with provisions of chapters 59.12 and 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, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, 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 59.18.055 and 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, except when a mobile home or a tenancy in a mobile home lot is abandoned. Rentals of mobile homes themselves are governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW. [1997 c 86 § 2; 1981 c 304 § 5; 1979 ex.s. c 186 § 2; 1977 ex.s. c 279 § 4.]

**Severability—1981 c 304:** See note following RCW 26.16.030.

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

## Title 60

## LIENS

## Chapters

**60.42 Commercial real estate broker lien act.**

## Chapter 60.42

## COMMERCIAL REAL ESTATE BROKER LIEN ACT

## Sections

60.42.005 Definitions.  
 60.42.010 Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest.  
 60.42.020 Disputed claim—Order to show cause—Hearing.  
 60.42.030 Lien on net rental proceeds—Order to show cause—Hearing.  
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**60.42.005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state except an interest in real property which is (a) improved with one single-family residential unit or one multifamily structure with four or less residential units, or (b) unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate, or (c) classified as farm and agricultural land or timber land for assessment purposes pursuant to chapter 84.34 RCW, or (d) improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis. Real estate will be considered commercial real estate if the commission agreement so provides, or if it meets the definition contained in this section on the date of the disposition.

(2) "Commission agreement" means a written instrument which meets the requirements of RCW 19.36.010 signed by the owner, or by a party duly authorized to sign on behalf of the owner, of commercial real estate, pursuant to which the owner agrees to pay a broker a real estate commission upon either the disposition or lease of commercial real estate or upon entering into an agreement for disposition or lease of commercial real estate. When a broker and owner execute multiple versions of a commission agreement regarding the same disposition of commercial real estate, the final written version of the commission agreement, which incorporates the final agreement between the broker and the owner, constitutes the "commission agreement" and shall be used to determine the amount of the lien created by this chapter.

(3) "Days" means calendar days. However, if a period ends on a day other than a business day, then the last day shall be the next business day.

(4) "Disposition" means a voluntary transfer or conveyance of commercial real estate.

(5) "Escrow closing agent" means the person or entity who receives documents and funds for recording and disbursement in completing a transaction for the disposition of commercial real estate.

(6) "Lease" means a written agreement which gives rise to a relationship of landlord and tenant, affecting commercial real estate, such that the holder of a fee simple interest or possessory estate in commercial real estate permits another to possess the commercial real estate for a period, and which meets the requirements of RCW 19.36.010, if applicable.

(7) "Net rental proceeds" means the base rent paid by the tenant under a lease, less any amounts currently due under the terms of liens which have priority over the lien created under this chapter. Base rent is the rent so designated in a lease as base rent, or a similar term, for the possession and use of the commercial real estate, but does not

include separate payments made by tenants for insurance, taxes, utilities, or other expenses.

(8) "Owner" means a person or entity which is vested in record fee title or a possessory estate in commercial real estate.

(9)(a) "Owner's net proceeds" means the gross sales proceeds from the disposition of the commercial real estate described in a notice of claim of lien against proceeds pursuant to this chapter, less the following: (i) Amounts necessary to pay all encumbrances and liens which have priority over the lien created by this chapter other than those permitted to remain by the buyer; (ii) owner's closing costs, such as real estate excise tax, title insurance premiums, real estate tax and assessment prorations, and escrow fees payable by the owner pursuant to an agreement with the buyer; and (iii) amounts held by a third party for use by the owner to complete an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue code of 1986, as amended.

(b) "Owner's net proceeds" shall include any gross sales proceeds which are held by a third party for purposes of completing an exchange of real estate which is deferred from federal income tax under section 1031 of the internal revenue code of 1986, as amended, but are subsequently not used for that purpose. "Owner's net proceeds" are personal property, upon which the lien created by this chapter attaches.

(10) "Real estate broker" or "broker" means the same as defined in RCW 18.85.010.

(11) "Real property" means one or more parcels or tracts of land, including appurtenances or improvements. [1997 c 3 15 § 1.]

**60.42.010 Lien upon personal property—Effective date—Notice of claim of lien—Waiver of lien rights—Court costs, attorneys' fees, and statutory interest.** (1) The lien created under this chapter is a lien upon personal property, not upon real property.

(2) A broker has a lien upon the owner's net proceeds from the disposition of commercial real estate and a lien upon the net rental proceeds from the lease of commercial real estate in the amount which the owner has agreed to pay the broker under a commission agreement. The lien under this chapter is available only to the broker named in the commission agreement, and may not be assigned voluntarily or by operation of law.

(3) Subject to the requirements of subsection (4) of this section, the lien created by this chapter becomes effective on the date of the recording of a notice of claim of lien upon proceeds pursuant to subsection (6) of this section, and is perfected by such recording. Recording must be made with the county auditor or recorder in the county or counties in which the commercial real estate is located.

(4) In the case of a disposition of commercial real estate, the lien under this chapter is not effective unless it is recorded at least thirty days prior to the date a deed conveying the commercial real estate is recorded in the office of the county auditor or recorder in the county or counties in which the commercial real estate is located. In the case of a lease of commercial real estate, the lien under this chapter is not

effective unless it is recorded within ninety days after the tenant takes possession of the leased commercial real estate.

(5) The lien created by this chapter is null and void unless, within ten days of recording its notice of claim of lien against proceeds, the broker delivers a copy of the notice of claim of lien against proceeds to the owner of the commercial real estate in the manner provided in RCW 60.42.070. In the case of the disposition of commercial real estate, on or before the date the deed conveying the commercial real estate is recorded, the broker shall deliver a copy of the notice of claim of lien against proceeds to the escrow closing agent closing the disposition in the manner provided in RCW 60.42.070, if the identity of the escrow closing agent is actually known by the broker.

(6) To be effective, the notice of claim of lien against proceeds must state the following:

(a) The name, address, and telephone number of the broker;

(b) The date of the commission agreement;

(c) The name of the owner of the commercial real estate;

(d) The legal description of the commercial real estate as described in the commission agreement;

(e) The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of a formula for how the amount is to be determined such as a percentage of the sales price;

(f) The real estate license number of the broker; and

(g) That the lien claimant has read the claim, knows the contents, and believes the same to be true and correct, and that the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalties of perjury.

A copy of the commission agreement must be attached to the recorded notice of claim of lien against proceeds. The notice of claim of lien against proceeds must recite that the information contained in the notice of claim of lien against proceeds is true and accurate to the knowledge of the signatory. The notice of claim of lien against proceeds must be acknowledged pursuant to chapter 64.08 RCW. A notice of claim of lien against proceeds substantially in the following form is sufficient:

**NOTICE OF CLAIM OF LIEN AGAINST PROCEEDS PURSUANT TO CHAPTER 60.42 RCW**

Notice is hereby given that the person named below claims a lien as to owner's net proceeds or net rental proceeds, but not real property, pursuant to chapter 60.42 RCW. In support of this lien, the following information is submitted:

1. Name, telephone number, and address of lien claimant: . . . . .

2. Washington state broker's license number of lien claimant: . . . . .

3. Date of the written commission agreement on which this claim is based: . . . . ., a true and complete copy of which is attached to this notice of claim of lien.

4. Name of the owner: . . . . .

5. Legal description of the commercial real estate described in the commission agreement: . . . . .

6. The amount for which the lien is claimed, which may be stated in a dollar amount or may be stated in the form of a formula for how the amount is to be determined such as a percentage of the sales price:

7. The undersigned lien claimant, being sworn, states: I have read the foregoing claim, know the contents, and believe the same to be true and correct, and the claim is made pursuant to a valid commission agreement, and is not frivolous, under penalty of perjury.

Signature of lien claimant
Name, Street Address, City, State of person signing
Telephone Number of person signing

State of Washington )
) ss
County of . . . . . )

Subscribed and sworn to, or affirmed, before me on . . .
by . . .

Signature
(Seal or stamp) Title
My appointment expires . . . . .
(Add acknowledgment pursuant to chapter 64.08 RCW)

(7) Whenever a notice of claim of lien against proceeds is recorded and a condition or event occurs, or fails to occur, that would preclude the broker from receiving compensation under the terms of the commission agreement, including the filing of a notice of claim of lien against proceeds in a manner which does not comply with this chapter, the broker shall record, within seven days following demand by the owner, a written release of the notice of claim of lien against proceeds.

(8) Whenever the amount claimed in a notice of claim of lien against proceeds is paid to the lien claimant, the lien claimant shall promptly record a satisfaction or release of the notice of claim of lien against proceeds on written demand of the owner no later than five days after receipt of payment. In the case of a disposition of commercial real estate, the escrow closing agent is required to pay to the lien claimant the owner's net proceeds up to the amount claimed in the notice of claim of lien against proceeds. If the amount claimed in the notice of claim of lien against proceeds is to be fully or partially paid to the lien claimant by the escrow closing agent, upon such disposition, then the lien claimant shall submit a release of the notice of claim of lien against proceeds in the amount of the owner's net proceeds or the amount of the lien, whichever is smaller, to the escrow closing agent to be held in escrow pending such disposition and payment. In a suit brought by the owner to compel delivery of the release by the lien claimant, if the court determines that the delay was unjustified, the court shall, in addition to ordering the release of the notice of claim of lien,

award the costs of the action including reasonable attorneys' fees to the prevailing party.

(9) An owner of commercial real estate may request that a broker waive the rights to a lien under this chapter, and such a waiver contained in the commission agreement signed by the broker is effective to waive the broker's rights to a lien under this chapter. In a suit filed by a broker to recover amounts due under a commission agreement in which the broker has waived lien rights under this chapter, if the court finds that payment is due to the broker under the commission agreement, the court, in addition to awarding normal damages, shall award to the broker court costs, reasonable attorneys' fees, and statutory interest, as provided in RCW 19.52.010, from the date the deed is recorded in the event of a disposition, or from the date the tenant takes possession in the event of a lease. [1997 c 315 § 2.]

60.42.020 Disputed claim—Order to show cause—Hearing.

(1) An owner of commercial real estate subject to a recorded notice of claim of lien against proceeds under this chapter, who disputes the broker's claim in the notice of claim of lien against proceeds, may apply by motion to the superior court for the county where the commercial real estate, or some part thereof, is located for an order directing the broker to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the broker, to show cause as to why the relief requested should not be granted. The motion must state the grounds upon which relief is asked and must be supported by the affidavit of the owner setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the broker fails to appear at the time and place noted, the notice of claim of lien against proceeds must be released, with prejudice, and the broker must be ordered to pay the costs requested by the owner, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is not a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order releasing the notice of claim of lien against proceeds and awarding costs and reasonable attorneys' fees to the owner to be paid by the broker. If the court determines that the owner is a party to an agreement which will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the broker, to be paid by the owner. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 3.]

60.42.030 Lien on net rental proceeds—Order to show cause—Hearing.

(1) If a broker has a lien on net rental proceeds pursuant to RCW 60.42.010(2), and the broker has recorded a notice of claim of lien against proceeds and otherwise complied with the requirements of this



chapter, the broker may apply by motion to the superior court for the county where the commercial real estate, or some part thereof, is located, for an order directing the owner to appear before the court at a time no earlier than seven nor later than fifteen days following the date of service of the motion and order on the owner, and show cause as to why the relief requested should not be granted. The motion must state the grounds upon which relief is asked, and must be supported by the affidavit of the broker setting forth a concise statement of the facts upon which the motion is based.

(2) The order to show cause must clearly state that if the owner fails to appear at the time and place noted, the broker shall be entitled to an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker, and that the owner shall be ordered to pay the costs requested by the broker, including reasonable attorneys' fees.

(3) If, following a hearing on the matter, the court determines that the owner is, or was, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order enjoining the owner from paying the net rental proceeds from such lease to any party other than the broker. The court shall also order the owner to pay such net rental proceeds to the broker and award costs and reasonable attorneys' fees to the broker, to be paid by the owner. If the court determines that the owner is not, or was not, a party to an agreement for the lease of commercial real estate, which did or will result in the owner being obligated to pay to the broker a commission pursuant to the terms of a commission agreement, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the owner, to be paid by the broker. Such orders are final judgments.

(4) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise. [1997 c 315 § 4.]

**60.42.040 Priority of lien claims.** All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a notice of claim of lien against proceeds have priority over a lien created under this chapter. A prior recorded lien includes, without limitation, a valid materialmen's or mechanic's lien claim that is recorded after the recording of the broker's notice of claim of lien against proceeds but which relates back to a date prior to the recording date of the broker's notice of claim of lien against proceeds. [1997 c 315 § 5.]

**60.42.050 Deposit made pending resolution of amounts due—Recording of receipt—Release of notice of claim of lien.** A notice of claim of lien against proceeds recorded under this chapter must be released without further act, upon the recording of a receipt showing the deposit with the superior court of the county in which the commercial

real estate, or some part thereof, is located, of an amount equal to one and one-quarter times the amount of the lien claimed. The receipt shall be recorded in the office in which the notice of claim was recorded. The amount of the deposit in the superior court shall be held pending a resolution of amounts due to the broker and the owner. [1997 c 315 § 6.]

**60.42.060 County auditor or recorder—Duties—Fees.** The county auditor or recorder shall record the notice of claim of lien against proceeds, and any release thereof, in the same manner as deeds and other instruments of title are recorded under chapter 65.08 RCW. Notices of claim of lien against proceeds for registered land need not be recorded in the Torrens register. The county auditor or recorder may not charge a higher fee for recording a notice of claim of lien against proceeds, or for a release thereof, than what the county auditor or recorder charges for other documents. [1997 c 315 § 7.]

**60.42.070 Delivery of notice of claim of lien—Form—Time effective—Address.** Notices to be delivered to a party under this chapter, other than service of process as required in civil actions, shall be by service of process, or by registered or certified mail, return receipt requested, or by personal or electronic delivery and obtaining evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the party to whom the notice is delivered or an affidavit of service. Delivery is effective at the time of personal service, or personal or electronic delivery, or three days following deposit in the mail as required by this section. Notice to a broker or owner may be given to the address of the broker or owner that is contained in the commission agreement, or such other address as is contained in a written notice from the broker or owner to the party giving the notice. If no address is provided in the commission agreement, the notice to the broker may be given to the broker's address of record with the department of licensing pursuant to chapter 18.85 RCW and notice to the owner may be given to the address of the commercial real estate. [1997 c 315 § 8.]

**60.42.900 Application.** This chapter applies to lien claims based on a commission agreement entered into on, or after, July 27, 1997. [1997 c 315 § 9.]

**60.42.901 Short title.** This chapter may be known and cited as the commercial real estate broker lien act. [1997 c 315 § 10.]

## Title 62A

### UNIFORM COMMERCIAL CODE

#### Articles

- 1 General provisions.
- 2 Sales.
- 4 Bank deposits and collections.
- 5 Letters of credit.

**9 Secured transactions; sales of accounts, contract rights and chattel paper.**

**Article 1**

**GENERAL PROVISIONS**

Sections

62A.1-105 Territorial application of the title; parties' power to choose applicable law.

**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 Leases. RCW 62A.2A-105 and 62A.2A-106.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Applicability of the Article on Letters of Credit. RCW 62A.5-116.

Applicability of the Article on Investment Securities. RCW 62A.8-110.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103. [1997 c 56 § 19; 1995 c 48 § 54. Prior: 1993 c 395 § 6-102; 1993 c 230 § 2A-601; 1981 c 41 § 1; 1965 ex.s. c 157 § 1-105.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015.

**Savings—1995 c 48:** See RCW 62A.8-601.

**Effective date—1995 c 48:** See RCW 62A.11-113.

**Effective date—1993 c 230:** See RCW 62A.11-110.

**Effective date—1981 c 41:** See RCW 62A.11-101.

**Article 2**

**SALES**

Sections

62A.2-512 Payment by buyer before inspection.

**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.5-109(2)).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his or her remedies. [1997 c 56 § 20;

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.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015.

**Article 4**

**BANK DEPOSITS AND COLLECTIONS**

Sections

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.

**62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.** (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid, copies of the items paid, or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items paid or copies of the items paid, it shall provide in the statement of account the telephone number that the customer may call to request an item or copy of an item pursuant to subsection (b) of this section.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, upon request and without charge to the customer, at least two items or copies of items with respect to each statement of account sent to the customer. A bank may charge fees for additional items or copies of items in accordance with RCW 30.22.230. Requests for ten items or less shall be processed and completed within ten business days.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer, failed with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a natural person whose account is primarily for personal, family, or household purposes who does not within one year, and any other customer who does not within sixty days, from the time the statement and items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature or any alteration on the face or back of the item or does not within one year from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under RCW 62A.4-208 with respect to the unauthorized signature or alteration to which the preclusion applies. [1997 c 53 § 1; 1995 c 107 § 1; 1993 c 229 § 111; 1991 sp.s. c 19 § 1; 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.]

**Effective date—1995 c 107:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 107 § 2.]

**Recovery of attorneys' fees—Effective date—1993 c 229:** See RCW 62A.11-111 and 62A.11-112.

**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.

## Article 5 LETTERS OF CREDIT

### Sections

- 62A.5-1013 Applicability—Transition provision.
- 62A.5-1015 Savings—Transition provision.
- 62A.5-102 Definitions.
- 62A.5-103 Scope.
- 62A.5-104 Formal requirements.

- 62A.5-105 Consideration.
- 62A.5-106 Issuance, amendment, cancellation, and duration.
- 62A.5-107 Confirmer, nominated person, and adviser.
- 62A.5-108 Issuer's rights and obligations.
- 62A.5-109 Fraud and forgery.
- 62A.5-110 Warranties.
- 62A.5-111 Remedies.
- 62A.5-112 Transfer of letter of credit.
- 62A.5-113 Transfer by operation of law.
- 62A.5-114 Assignment of proceeds.
- 62A.5-115 Statute of limitations.
- 62A.5-116 Choice of law and forum.
- 62A.5-117 Subrogation of issuer, applicant, and nominated person.

**62A.5-1013 Applicability—Transition provision.** Chapter 56, Laws of 1997 applies to a letter of credit that is issued on or after July 27, 1997. Chapter 56, Laws of 1997 does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before July 27, 1997. [1997 c 56 § 1.]

**62A.5-1015 Savings—Transition provision.** A transaction arising out of or associated with a letter of credit that was issued before July 27, 1997, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by chapter 56, Laws of 1997 as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law. [1997 c 56 § 2.]

**62A.5-102 Definitions.** (1) The definitions in this section apply throughout this Article unless the context clearly requires otherwise:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in RCW 62A.5-108(5) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or

"Acceptance" RCW 62A.3-409

"Value" RCW 62A.3-303, RCW 62A.4-211.

(3) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article. [1997 c 56 § 3; 1965 ex.s. c 157 § 5-102.]

**62A.5-103 Scope.** (1) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(3) With the exception of this subsection, subsections (1) and (4) of this section, RCW 62A.5-102(1) (i) and (j), 62A.5-106(4), and 62A.5-114(4), and except to the extent

prohibited in RCW 62A.1-102(3) and 62A.5-117(4), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary. [1997 c 56 § 4; 1965 ex.s. c 157 § 5-103.]

**62A.5-104 Formal requirements.** A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (1) by a signature or (2) in accordance with the agreement of the parties or the standard practice referred to in RCW 62A.5-108(5). [1997 c 56 § 5; 1965 ex.s. c 157 § 5-104.]

**62A.5-105 Consideration.** Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. [1997 c 56 § 6; 1965 ex.s. c 157 § 5-105.]

**62A.5-106 Issuance, amendment, cancellation, and duration.** (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued. [1997 c 56 § 7; 1965 ex.s. c 157 § 5-106.]

**62A.5-107 Confirmer, nominated person, and adviser.** (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not

obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies. [1997 c 56 § 8; 1965 ex.s. c 157 § 5-107.]

**62A.5-108 Issuer's rights and obligations.** (1) Except as otherwise provided in RCW 62A.5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in RCW 62A.5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) To honor;

(b) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(c) To give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in RCW 62A.5-109(1) or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(b) An act or omission of others; or

(c) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5) of this section.

(7) If an undertaking constituting a letter of credit under RCW 62A.5-102(1)(j) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this Article:

(a) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) Takes the documents free of claims of the beneficiary or presenter;

(c) Is precluded from asserting a right of recourse on a draft under RCW 62A.3-414 and 62A.3-415;

(d) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged. [1997 c 56 § 9; 1965 ex.s. c 157 § 5-108.]

**62A.5-109 Fraud and forgery.** (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) All of the conditions to entitle a person to the relief under the law of this state have been met; and

(d) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (1)(a) of this section. [1997 c 56 § 10; 1965 ex.s. c 157 § 5-109.]

**62A.5-110 Warranties.** (1) If its presentation is honored, the beneficiary warrants:

(a) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in RCW 62A.5-109(1); and

(b) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(2) The warranties in subsection (1) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles. [1997 c 56 § 11; 1965 ex.s. c 157 § 5-110.]

**62A.5-111 Remedies.** (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (1) or (2) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2) of this section.

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this Article.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated. [1997 c 56 § 12; 1965 ex.s. c 157 § 5-111.]

**62A.5-112 Transfer of letter of credit.** (1) Except as otherwise provided in RCW 62A.5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) The transfer would violate applicable law; or

(b) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in RCW 62A.5-108(5) or is otherwise reasonable under the circumstances. [1997 c 56 § 13; 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 Transfer by operation of law.** (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in RCW 62A.5-108(5) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) of this section has the consequences specified in RCW 62A.5-108(9) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of RCW 62A.5-109.

(5) An issuer whose rights of reimbursement are not covered by subsection (4) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2) of this section.

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section. [1997 c 56 § 14; 1965 ex.s. c 157 § 5-113.]

**62A.5-114 Assignment of proceeds.** (1) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law. [1997 c 56 § 15; 1995 c 48 § 57; 1986 c 35 § 54; 1965 ex.s. c 157 § 5-114.]

**Savings—1995 c 48:** See RCW 62A.8-601.

**Effective date—1995 c 48:** See RCW 62A.11-113.

**62A.5-115 Statute of limitations.** An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. [1997 c 56 § 16; 1965 ex.s. c 157 § 5-115.]

**62A.5-116 Choice of law and forum.** (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in RCW 62A.5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (a) this Article would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2) of this section, (b) the relevant undertaking incorporates rules of custom or practice, and (c) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in RCW 62A.5-103(3).

(4) If there is conflict between this Article and Article 3, 4, 4A, or 9, this Article governs.

(5) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1) of this section. [1997 c 56 § 17; 1981 c 41 § 5; 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.]

**Effective date—1981 c 41:** See RCW 62A.11-101.

**62A.5-117 Subrogation of issuer, applicant, and nominated person.** (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(2) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1) of this section.



(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse. [1997 c 56 § 18; 1965 ex.s. c 157 § 5-117.]

## Article 9

### SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

#### Sections

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**62A.9-103 Perfection of security interest in multiple state transactions.** (1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents, instruments, rights to proceed of written letters of credit, and goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives

possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of RCW 62A.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(e) For purposes of this subsection, rights to proceeds of a written letter of credit are deemed located where the letter of credit is located.

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law

(including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in RCW 62A.8-110(4).

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in RCW 62A.8-110(5).

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) if an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) if an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) if an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. [1997 c 56 § 21; 1995 c 48 § 58; 1986 c 35 § 45; 1981 c 41 § 7; 1965 ex.s. c 157 § 9-103.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015.

**Savings—1995 c 48:** See RCW 62A.8-601.

**Effective date—1995 c 48:** See RCW 62A.11-113.

**Effective date—1981 c 41:** See RCW 62A.11-101.

**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 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 or to a lien created under chapter 60.13 or 22.09 RCW 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 a transfer by a government or governmental subdivision or agency; or

(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (RCW 62A.9-306) and priorities in proceeds (RCW 62A.9-312); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); 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 claim arising out of tort; or

(l) to a transfer of an interest in any deposit account (subsection (1) of RCW 62A.9-105), except as provided with respect to proceeds (RCW 62A.9-306) and priorities in proceeds (RCW 62A.9-312); or

(m) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit. [1997 c 56 § 22; 1985 c 412 § 11; 1983 c 305 § 75; 1981 c 41 § 8; 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.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015.

**Severability—1983 c 305:** See note following RCW 20.01.010.

**Effective date—1981 c 41:** See RCW 62A.11-101.

**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 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, but a charter or other contract involving the use or hire of a vessel is not chattel paper. 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 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 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) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201), and a receipt of the kind described in subsection (2) of RCW 62A.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "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, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), 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. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts 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;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this Article and the sections in which they appear are:

|                                     |                   |
|-------------------------------------|-------------------|
| "Account".                          | RCW 62A.9-106.    |
| "Attach".                           | RCW 62A.9-203.    |
| "Commodity contract".               | RCW 62A.9-115.    |
| "Commodity customer".               | RCW 62A.9-115.    |
| "Commodity intermediary".           | RCW 62A.9-115.    |
| "Construction mortgage".            | RCW 62A.9-313(1). |
| "Consumer goods".                   | RCW 62A.9-109(1). |
| "Control".                          | RCW 62A.9-115.    |
| "Equipment".                        | RCW 62A.9-109(2). |
| "Farm products".                    | RCW 62A.9-109(3). |
| "Fixture".                          | RCW 62A.9-313.    |
| "Fixture filing".                   | RCW 62A.9-313.    |
| "General intangibles".              | RCW 62A.9-106.    |
| "Inventory".                        | RCW 62A.9-109(4). |
| "Investment property".              | RCW 62A.9-115.    |
| "Lien creditor".                    | RCW 62A.9-301(3). |
| "Proceeds".                         | RCW 62A.9-306(1). |
| "Purchase money security interest". | RCW 62A.9-107.    |
| "United States".                    | RCW 62A.9-103.    |

(3) The following definitions in other Articles apply to this Article:

|                                   |                   |
|-----------------------------------|-------------------|
| "Broker".                         | RCW 62A.8-102.    |
| "Certificated security".          | RCW 62A.8-102.    |
| "Check".                          | RCW 62A.3-104.    |
| "Clearing corporation".           | RCW 62A.8-102.    |
| "Contract for sale".              | RCW 62A.2-106.    |
| "Control".                        | RCW 62A.8-106.    |
| "Delivery".                       | RCW 62A.8-301.    |
| "Entitlement holder".             | RCW 62A.8-102.    |
| "Financial asset".                | RCW 62A.8-102.    |
| "Holder in due course".           | RCW 62A.3-302.    |
| "Letter of credit".               | RCW 62A.5-102.    |
| "Note".                           | RCW 62A.3-104.    |
| "Proceeds of a letter of credit". | RCW 62A.5-114(1). |
| "Sale".                           | RCW 62A.2-106.    |
| "Securities intermediary".        | RCW 62A.8-102.    |
| "Security".                       | RCW 62A.8-102.    |
| "Security certificate".           | RCW 62A.8-102.    |
| "Security entitlement".           | RCW 62A.8-102.    |
| "Uncertificated security".        | RCW 62A.8-102.    |

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1997 c 56 § 23; 1995 c 48 § 59; 1986 c 35 § 46; 1981 c 41 § 9; 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.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015

**Savings—1995 c 48:** See RCW 62A.8-601.

**Effective date—1995 c 48:** See RCW 62A.11-113.

**Effective date—1981 c 41:** See RCW 62A.11-101.

**62A.9-106 Definitions: "Account"; "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, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. [1997 c 56 § 24; 1995 c 48 § 60; 1981 c 41 § 10; 1965 ex.s. c 157 § 9-106. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015.

**Savings—1995 c 48:** See RCW 62A.8-601.

**Effective date—1995 c 48:** See RCW 62A.11-113.

**Effective date—1981 c 41:** See RCW 62A.11-101.

**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 the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or 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) of this section and subsections (2) and (3) of RCW 62A.9-306 on proceeds.

(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, certificated securities, 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 certificated security, 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 but priority between conflicting security interests in the goods is subject to subsection (3) of RCW 62A.9-312; or

(b) delivers the instrument or certificated security 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. [1997 c 56 § 25; 1995 c 48 § 66; 1986 c 35 § 49; 1981 c 41 § 17; 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.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015.

**Savings—1995 c 48:** See RCW 62A.8-601.

**Effective date—1995 c 48:** See RCW 62A.11-113.

**Effective date—1981 c 41:** See RCW 62A.11-101.

**62A.9-305 When possession by secured party perfects security interest without filing.** A security interest in goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. 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. [1997 c 56 § 26; 1995 c 48 § 67; 1986 c 35 § 50; 1981 c 41 § 18; 1965 ex.s. c 157 § 9-305.]

**Applicability—Savings—Transition provisions—1997 c 56:** See RCW 62A.5-1013 and 62A.5-1015.

**Savings—1995 c 48:** See RCW 62A.8-601.

**Effective date—1995 c 48:** See RCW 62A.11-113.

**Effective date—1981 c 41:** See RCW 62A.11-101.

**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) of this section those provided in the security agreement. He or she may reduce his or her 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.

(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 in (a) through (e) of this subsection may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of RCW 62A.9-504 and 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 or she may proceed as to both the real and the personal property in accordance with his or her 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 or her claim to judgment the lien of any levy which may be made upon his or her 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. [1997 c 138 § 1; 1981 c 41 § 34; 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.]

**Effective date—1981 c 41:** See RCW 62A.11-101.

## Title 63

### PERSONAL PROPERTY

#### Chapters

- 63.14 Retail installment sales of goods and services.
- 63.21 Lost and found property.

## Chapter 63.14

## RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

## Sections

- 63.14.010 Definitions. (*Effective January 1, 1998.*)  
 63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited. (*Effective January 1, 1998.*)

**63.14.010 Definitions.** (*Effective January 1, 1998.*)

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) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(3) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(4) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(5) "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;

(6) "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;

(7) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(8) "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, a retail charge agreement, or a lender credit card 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;

(9) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card 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. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers 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;

(11) "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, any vehicle dealer administrative fee under RCW 46.12.042, or official fees;

(12) "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. The sale price may include any taxes, registration and license fees, any vehicle dealer administrative fee,

and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(13) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(14) "Time balance" means the principal balance plus the service charge;

(15) "Principal balance" means the 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, any vehicle dealer administrative fee, and official fees;

(16) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(17) "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. [1997 c 331 § 6; 1993 sp.s. c 5 § 1; 1992 c 134 § 16; 1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

**Effective date—1997 c 331:** See note following RCW 70.168.135.

**Short title—Severability—1992 c 134:** See RCW 63.19.900 and 63.19.901.

**Severability—1983 c 158:** See RCW 63.10.900.

**Application, saving—Severability—1981 c 77:** See RCW 63.14.902 and 63.14.903.

**Effective date—1972 ex.s. c 47:** "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.] For codification of 1972 ex.s. c 47, see Codification Tables, Volume 0.

**63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited.** (*Effective January 1, 1998.*) 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, except for any vehicle dealer administrative fee under RCW 46.12.042.

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)(7)(g).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged. [1997 c 331 § 7; 1992 c 193 § 1. Prior: 1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

**Effective date—1997 c 331:** See note following RCW 70.168.135.

**Effective date—1987 c 318:** "This act shall take effect January 1, 1988." [1987 c 318 § 2.]

**Application, saving—Severability—1981 c 77:** See RCW 63.14.902 and 63.14.903.

## 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.
- 63.21.030 Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim.

**63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.** (1) 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:

(a) 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, unless the found property is cash; and

(b) 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.

(2) Within thirty days of the report the governmental entity shall 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, unless the appraised value of the property is less than the cost of publishing notice. If the value is less than the cost of publishing notice, the governmental entity may cause notice to be posted or published in other media or formats that do not incur expense to the governmental entity. [1997 c 237 § 1; 1979 ex.s. c 85 § 1.]

**63.21.030 Release of property to finder—Limitations—Payment to governmental entity—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 payment to the treasurer of the governmental entity handling the found property, the amount of ten dollars plus the amount of the cost of publication of notice incurred by the government [governmental] entity pursuant to RCW 63.21.010, which amount shall be deposited in the general fund of the governmental entity. If the appraised value of the property is less than the cost of publication of notice of the finding, then the finder is not required to pay any fee.



(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. [1997 c 237 § 2; 1979 ex.s. c 85 § 3.]

## Title 64

### REAL PROPERTY AND CONVEYANCES

#### Chapters

- 64.34** Condominium act.  
**64.44** Contaminated properties.

#### Chapter 64.34

#### CONDOMINIUM ACT

##### Sections

- 64.34.232 Survey maps and plans.  
 64.34.410 Public offering statement—General provisions.

**64.34.232 Survey maps and plans.** (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled "SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION"; any land that may be added to the condominium shall also be labeled "MAY BE ADDED TO THE CONDOMINIUM"; any land that may be withdrawn from the condominium shall also be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM";

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which

a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) Subject to the provisions of subsection (8) of this section, the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement under RCW 64.34.410(1)(j) and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not including the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) Subject to the provisions of subsection (8) of this section, the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

(8) In showing or projecting the location and dimensions of the vertical boundaries of a unit under subsections (2)(f) and (4)(a) of this section, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units

if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the survey map under subsection (2)(b) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building. [1997 c 400 § 2; 1992 c 220 § 10; 1989 c 43 § 2-109.]

**64.34.410 Public offering statement—General provisions.** (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;
- (i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;
- (k) A list of the limited common elements assigned to the units being offered for sale;
- (l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;
- (m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;
- (n) The status of construction of the units and common elements, including estimated dates of completion if not completed;
- (o) The estimated current common expense liability for the units being offered;
- (p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;
- (q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(10);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant; and

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), and (ii) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

### Chapter 64.44

### CONTAMINATED PROPERTIES

Sections

64.44.060 Certification of contractors—Denial, suspension, or revocation of certificate—Duties of department of health—Decontamination account.

**64.44.060 Certification of contractors—Denial, suspension, or revocation of certificate—Duties of department of health—Decontamination account.** (1) After January 1, 1991, a contractor may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department

shall establish performance standards for contractors by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors and their employees on the essential elements in assessing property used as an illegal drug manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, the contractor or employee shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to file a work plan;

(c) Failing to perform work pursuant to the work plan;

(d) Failing to perform work that meets the requirements of the department;

(e) The certificate was obtained by error, misrepresentation, or fraud; or

(f) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for the issuance and renewal of certificates, the administration of examinations, and for the review of training courses.

(7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter. [1997 c 58 § 878; 1990 c 213 § 7.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to

certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Title 66

### ALCOHOLIC BEVERAGE CONTROL

#### Chapters

- 66.04 Definitions.
- 66.08 Liquor control board—General provisions.
- 66.16 State liquor stores.
- 66.20 Liquor permits.
- 66.24 Licenses—Stamp taxes.
- 66.28 Miscellaneous regulatory provisions.
- 66.44 Enforcement—Penalties.
- 66.98 Construction.

#### Chapter 66.04 DEFINITIONS

##### Sections

66.04.010 Definitions. (*Effective July 1, 1998.*)

**66.04.010 Definitions.** (*Effective July 1, 1998.*) 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. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(3) "Beer distributor" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state, beer importers, or foreign produced beer from a source outside the state of Washington, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(4) "Beer importer" means a person or business within Washington who purchases beer from a United States brewery holding a certificate of approval (B5) or foreign produced beer from a source outside the state of Washington for the purpose of selling the same pursuant to this title.

(5) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevo-

lent, educational, athletic or social purposes, and not for pecuniary gain.

(8) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(9) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(10) "Distiller" means a person engaged in the business of distilling spirits.

(11) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(12) "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 chapter 18.64 RCW.

(13) "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.

(14) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(15) "Fund" means 'liquor revolving fund.'

(16) "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.

(17) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(18) "Imprisonment" means confinement in the county jail.

(19) "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. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(20) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(21) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter 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 eight 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 containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(22) "Package" means any container or receptacle used for holding liquor.

(23) "Permit" means a permit for the purchase of liquor under this title.

(24) "Person" means an individual, copartnership, association, or corporation.

(25) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(26) "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.

(27) "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.

(28) "Regulations" means regulations made by the board under the powers conferred by this title.

(29) "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.

(30) "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. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(31) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(32) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(33) "Store" means a state liquor store established under this title.

(34) "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.

(35) "Vendor" means a person employed by the board as a store manager under this title.

(36) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(37) "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 twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(38) "Wine distributor" 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.

(39) "Wine importer" means a person or business within Washington who purchases wine from a United States winery holding a certificate of approval (W7) or foreign produced wine from a source outside the state of Washington for the purpose of selling the same pursuant to this title. [1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

**Severability—1982 c 39:** "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." [1982 c 39 § 3.]

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**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.]

## Chapter 66.08

### LIQUOR CONTROL BOARD—GENERAL PROVISIONS

#### Sections

- 66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined.
- 66.08.050 Powers of board in general.
- 66.08.0501 Adoption of rules. (*Effective July 1, 1998.*)
- 66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. (*Effective until July 1, 1998.*)
- 66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. (*Effective July 1, 1998.*)
- 66.08.196 Liquor revolving fund—Distribution of funds to border areas.
- 66.08.235 Liquor control board construction and maintenance account.

**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, pilot projects, 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 and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, transaction fees associated with credit card purchases pursuant to RCW 66.16.040 and 66.16.041, 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. [1997 c 148 § 1; 1996 c 291 § 3; 1983 c 160 § 2; 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.]

**Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6:** See notes following RCW 66.08.170.

**66.08.050 Powers of board in general.** The board, subject to the provisions of this title and the rules, 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. In

addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a vendor for the purpose of sale of liquor products of its own manufacture on the licensed premises only. 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 services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) 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: **PROVIDED,** That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 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

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.]

**Severability—1963 c 239:** See note following RCW 66.08.026.

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

**66.08.0501 Adoption of rules. (Effective July 1, 1998.)** The liquor control board may adopt appropriate rules pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of chapter 321, Laws of 1997. [1997 c 321 § 56.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. (Effective until July 1, 1998.)** Except as provided in RCW 66.24.290(1), 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.

(1) 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 as follows:

(a) Three hundred thousand dollars per biennium, to the University of Washington for the forensic investigations council to conduct the state toxicological laboratory pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining 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, 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 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine

industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure 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. [1997 c 451 § 3; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 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.]

**\*Reviser's note:** The term "this act" was originally used in chapter 13, Laws of 1935.

**Effective date—1997 c 451:** See note following RCW 66.24.290.

**Severability—1987 c 458:** See note following RCW 48.21.160.

**Effective date—1986 c 87:** "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**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.]

**Severability—1949 c 5:** See RCW 66.98.080.

*Distribution for state toxicological lab: RCW 68.50.107.*

*Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.*

**66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. (Effective July 1, 1998.)** Except as provided in RCW 66.24.290(1), 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.

(1) 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 as follows:

(a) Three hundred thousand dollars per biennium, to the University of Washington for the forensic investigations council to conduct the state toxicological laboratory pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, 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 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure 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. [1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 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.]

**Reviser's note:** \*(1) The term "this act" was originally used in chapter 13, Laws of 1935.

\*\*\*(2) "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31.

(3) This section was amended by 1997 c 321 § 57 and by 1997 c 451 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 451:** See note following RCW 66.24.290.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—1987 c 458:** See note following RCW 48.21.160.

**Effective date—1986 c 87:** "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**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.]

**Severability—1949 c 5:** See RCW 66.98.080.

*Distribution for state toxicological lab: RCW 68.50.107.*

*Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.*

**66.08.196 Liquor revolving fund—Distribution of funds to border areas.** Distribution of funds to border areas under RCW 66.08.190 and 66.24.290 (1)(a) and (4) shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border shall be made to the county in which such an area is located and may only be spent on services provided to that area. [1997 c 451 § 4; 1995 c 159 § 3.]

**Effective date—1997 c 451:** See note following RCW 66.24.290.

**Effective date—1995 c 159:** See note following RCW 66.08.190.

**66.08.235 Liquor control board construction and maintenance account.** The liquor control board construc-

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tion and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and vendor system. [1997 c 75 § 1.]

**Reviser's note:** 1997 c 75 directed that this section be added to chapter 43.79 RCW. This section has been codified in chapter 66.08 RCW, which relates more directly to the liquor control board.

**Effective date—1997 c 75:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 75 § 3.]

## Chapter 66.16

### STATE LIQUOR STORES

#### Sections

66.16.041 Credit and debit card purchases—Rules—Report to legislature.

66.16.100 Fortified wine sales. (*Effective July 1, 1998.*)

**66.16.041 Credit and debit card purchases—Rules—Report to legislature.** (1) The state liquor control board shall accept bank credit card and debit cards from nonlicensees for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize liquor vendors appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) The board shall provide a report evaluating the implementation of this section to the appropriate committees of the legislature by January 1, 1998. [1997 c 148 § 2; 1996 c 291 § 2.]

**66.16.100 Fortified wine sales.** (*Effective July 1, 1998.*) No state liquor store in a county with a population over three hundred thousand may sell fortified wine if the board finds that the sale would be against the public interest based on the factors in RCW 66.24.360. The burden of establishing that the sale would be against the public interest is on those persons objecting. [1997 c 321 § 42; 1987 c 386 § 5.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

## Chapter 66.20

### LIQUOR PERMITS

#### Sections

66.20.010 Permits classified—Issuance—Fees. (*Effective July 1, 1998.*)

66.20.085 License suspension—Noncompliance with support order—Reissuance.

66.20.300 Alcohol servers—Definitions. (*Effective July 1, 1998.*)

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (*Effective July 1, 1998.*)

**66.20.010 Permits classified—Issuance—Fees.** (*Effective July 1, 1998.*) 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 to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) 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;

(7) 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;

(8) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative 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 full service restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative 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;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a non-profit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a hotel or similar facility offering from one to eight lodging units and breakfast to travelers and guests. [1997 c 321 § 43. Prior: 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 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.]

**\*Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Finding and declaration—Severability—1984 c 78:** See notes following RCW 66.12.160.

**66.20.085 License suspension—Noncompliance with support order—Reissuance.** The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 861.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**66.20.300 Alcohol servers—Definitions.** (*Effective July 1, 1998.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person serving or selling alcohol, spirits, wines, or beer for consumption at an on-premises retail licensed facility as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, and 66.24.570. [1997 c 321 § 44; 1996 c 218 § 2; 1995 c 51 § 2.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Findings—1995 c 51:** "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

**66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.** (*Effective July 1, 1998.*) (1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every person employed, under contract or otherwise, by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, or 66.24.570, who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages shall have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) No licensee described in (a) of this subsection, except as provided in (d) of this subsection, may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [1997 c 321 § 45. Prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Findings—1995 c 51:** See note following RCW 66.20.300.

## Chapter 66.24

### LICENSES—STAMP TAXES

#### Sections

66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. (*Effective until July 1, 1998.*)

- 66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. *(Effective July 1, 1998.)*
- 66.24.012 License suspension—Noncompliance with support order—Reissuance.
- 66.24.150 Manufacturer's license—Scope—Fee. *(Effective July 1, 1998.)*
- 66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Domestic wine made into sparkling wine. *(Effective July 1, 1998.)*
- 66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee. *(Effective July 1, 1998.)*
- 66.24.200 Wine distributor's license—Fee. *(Effective July 1, 1998.)*
- 66.24.203 Wine importer's license—Principal office—Report—Labels—Fee. *(Effective July 1, 1998.)*
- 66.24.204 Repealed. *(Effective July 1, 1998.)*
- 66.24.206 Certificate of approval required for out-of-state winery or manufacturer to sell or ship to Washington distributors or importers—Reports—Agreement with board—Fee. *(Effective July 1, 1998.)*
- 66.24.210 Imposition of taxes on all wines and cider sold to wine distributors and liquor control board—Additional taxes imposed—Distributions. *(Effective July 1, 1998.)*
- 66.24.230 Monthly reports of winery, wine importer, and wine distributor—Prohibited, authorized sales. *(Effective July 1, 1998.)*
- 66.24.240 Domestic brewery's license—Fee—Breweries operating as distributors and/or retailers. *(Effective July 1, 1998.)*
- 66.24.244 Microbrewery's license—Endorsement for on-premises consumption—Fees—Determination of status as tavern or limited service restaurant. *(Effective July 1, 1998.)*
- 66.24.250 Beer distributor's license—Fee. *(Effective July 1, 1998.)*
- 66.24.260 Repealed. *(Effective July 1, 1998.)*
- 66.24.261 Beer importer's license—Principal office—Report—Labels—Fee. *(Effective July 1, 1998.)*
- 66.24.270 Manufacturer's monthly report to board of quantity of malt liquor sales made to beer distributors—Certificate of approval and report for out-of-state or imported beer—Fee. *(Effective July 1, 1998.)*
- 66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes. *(Effective until July 1, 1998.)*
- 66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes. *(Effective July 1, 1998.)*
- 66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee. *(Effective July 1, 1998.)*
- 66.24.320 Limited service restaurant license—Containers—Fee—Caterer's endorsement. *(Effective July 1, 1998.)*
- 66.24.330 Tavern license—Fees. *(Effective July 1, 1998.)*
- 66.24.340 Repealed. *(Effective July 1, 1998.)*
- 66.24.350 Snack bar license—Fee. *(Effective July 1, 1998.)*
- 66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. *(Effective July 1, 1998.)*
- 66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—International export endorsement. *(Effective July 1, 1998.)*
- 66.24.370 Repealed. *(Effective July 1, 1998.)*
- 66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. *(Effective July 1, 1998.)*
- 66.24.375 "Society or organization" defined for certain purposes. *(Effective July 1, 1998.)*
- 66.24.380 Special occasion license—Fee—Penalty. *(Effective July 1, 1998.)*
- 66.24.395 Interstate common carrier's licenses—Class CCI—Fees—Scope *(Effective July 1, 1998.)*
- 66.24.400 Liquor by the drink, full service restaurant license—Liquor by the bottle for hotel or club guests—Removing unopened liquor, when. *(Effective July 1, 1998.)*
- 66.24.420 Liquor by the drink, full service restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. *(Effective July 1, 1998.)*
- 66.24.425 Liquor by the drink, full service restaurant license—Restaurants not serving the general public. *(Effective July 1, 1998.)*
- 66.24.440 Liquor by the drink, full service restaurant, full service private club, and sports entertainment facility license—Purchase of liquor by licensees—Discount. *(Effective July 1, 1998.)*
- 66.24.450 Liquor by the drink, full service private club license—Qualifications—Fee. *(Effective July 1, 1998.)*
- 66.24.452 Private club beer and wine license—Fee. *(Effective July 1, 1998.)*
- 66.24.455 Bowling establishments—Extension of premises to con-course and lane areas—Beer and wine restaurant, tavern, snack bar, full service restaurant, full service private club, or beer and wine private club licensees. *(Effective July 1, 1998.)*
- 66.24.490 Repealed. *(Effective July 1, 1998.)*
- 66.24.495 Nonprofit arts organization license—Fee. *(Effective July 1, 1998.)*
- 66.24.500 Repealed. *(Effective July 1, 1998.)*
- 66.24.510 Repealed. *(Effective July 1, 1998.)*
- 66.24.540 Motel license—Fee. *(Effective July 1, 1998.)*
- 66.24.550 Beer and wine gift delivery license—Fee—Limitations. *(Effective July 1, 1998.)*
- 66.24.560 Repealed. *(Effective July 1, 1998.)*
- 66.24.570 Sports/entertainment facility license—Fee—Caterer's endorsement. *(Effective July 1, 1998.)*

**66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. *(Effective until July 1, 1998.)*** (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. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) 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;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) 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; or

(d) A corporation, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) 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.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW 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.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) 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 administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she 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 administrative law judge, 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. 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 may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a class H license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) 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. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board,

the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(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. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(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 county legislative authority, 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 county legislative authority 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 Title 34 RCW. Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority 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 (a) 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 and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license class A, B, D, or E or wine retailer license class C or F or class H license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any 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 school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. 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. No liquor license may be issued or reissued by the board to any motor sports facility or licensee

operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or wholesaler license to an applicant assuming an existing retail or wholesaler license to continue the operation of the retail or wholesaler premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or wholesaler license within ninety days of the date of filing the application for a temporary license;

(b) The retail or wholesaler license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or wholesaler license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full. [1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 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 (23U) now codified as RCW 66.24.025.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**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.]

**66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. (Effective July 1, 1998.)** (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. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) 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;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) 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;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) 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.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW 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.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) 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 administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she 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 administrative law judge, 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. 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 may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a full service restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) 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. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board,

the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(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. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(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 county legislative authority, 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 county legislative authority 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 Title 34 RCW. Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority 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 (a) 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 and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or full service restaurant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any 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 school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. 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. No liquor license may be issued or



reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant assuming an existing retail or distributor license to continue the operation of the retail or distributor premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or distributor license within ninety days of the date of filing the application for a temporary license;

(b) The retail or distributor license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or distributor license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full. [1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 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 (23U) now codified as RCW 66.24.025.]

**Reviser's note:** \*(1) 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

(2) This section was amended by 1997 c 58 § 873 and by 1997 c 321 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 321:** "This act takes effect July 1, 1998." [1997 c 321 § 64.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**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.]

**66.24.012 License suspension—Noncompliance with support order—Reissuance.** The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 862.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**66.24.150 Manufacturer's license—Scope—Fee.** (*Effective July 1, 1998.*) There shall be a license to manufacturers of liquor, including all kinds of manufacturers except those licensed as distillers, domestic brewers, microbreweries, wineries, and domestic wineries, authorizing such licensees to manufacture, import, sell, and export liquor from the state; fee five hundred dollars per annum. [1997 c 321 § 2; 1981 1st ex.s. c 5 § 29; 1937 c 217 § 1 (23A)

(adding new section 23-A to 1933 ex.s. c 62); RRS § 7306-23A.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Domestic wine made into sparkling wine.** (*Effective July 1, 1998.*) (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a distributor and/or retailer of wine of its own production. Any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(4) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee.** (*Effective July 1, 1998.*) (1) There shall be a license for bonded wine warehouses which shall authorize the storage of bottled wine only. Under this license a licensee may maintain a warehouse for the storage of wine off the premises of a winery.

(2) The board shall adopt similar qualifications for a bonded wine warehouse license as required for obtaining a domestic winery license as specified in RCW 66.24.010 and 66.24.170. A licensee must be a sole proprietor, a partnership, a limited liability company, or a corporation. One or more domestic wineries may operate as a partnership, corporation, business co-op, or agricultural co-op for the purposes of obtaining a bonded wine warehouse license.

(3) All bottled wine shipped to a bonded wine warehouse from a winery or another bonded wine warehouse shall remain under bond and no tax imposed under RCW 66.24.210 shall be due, unless the wine is removed from bond and shipped to a licensed Washington wine distributor. Wine may be removed from a bonded wine warehouse only for the purpose of being (a) exported from the state, (b) shipped to a licensed Washington wine distributor, or (c) returned to a winery or bonded wine warehouse.

(4) Warehousing of wine by any person other than (a) a licensed domestic winery or a bonded wine warehouse licensed under the provisions of this section, (b) a licensed Washington wine distributor, (c) a licensed Washington wine importer, (d) a wine certificate of approval holder (W7), or (e) the liquor control board, is prohibited.

(5) A license applicant shall hold a federal permit for a bonded wine cellar and post a continuing wine tax bond in the amount of five thousand dollars in a form prescribed by the board prior to the issuance of a bonded wine warehouse license. The fee for this license shall be one hundred dollars per annum.

(6) The board shall adopt rules requiring a bonded wine warehouse to be physically secure, zoned for the intended use and physically separated from any other use.

(7) Every licensee shall submit to the board a monthly report of movement of bottled wines to and from a bonded wine warehouse in a form prescribed by the board. The board may adopt other necessary procedures by which bonded wine warehouses are licensed and regulated. [1997 c 321 § 4; 1984 c 19 § 1.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.200 Wine distributor's license—Fee.** (*Effective July 1, 1998.*) There shall be a license for wine distributors to sell wine, purchased from licensed Washington wineries, wine certificate of approval holders (W7), licensed wine importers, or suppliers of foreign wine located outside the state of Washington, to licensed wine retailers and other wine distributors and to export the same from the state; fee six hundred sixty dollars per year for each distributing unit. [1997 c 321 § 5; 1981 1st ex.s. c 5 § 32; 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—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1969 ex.s. c 21:** See note following RCW 66.04.010.

**66.24.203 Wine importer's license—Principal office—Report—Labels—Fee.** (*Effective July 1, 1998.*) There shall be a license for wine importers that authorizes the licensee to import wine manufactured within the United States by certificate of approval holders (W7) into the state of Washington. The licensee may also import wine manufactured outside the United States.

(1) Wine so imported may be sold to licensed wine distributors or exported from the state.

(2) 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 this license.

(3) 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 a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a wine importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of wine sold or

delivered to each licensed wine distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Wine imported under this license must conform to the provisions of RCW 66.28.110 and have received label approval from the board. The board shall not certify wines labeled with names that may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic winery or imported nor wines that fail to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [1997 c 321 § 6.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.204 Repealed.** (*Effective July 1, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.206 Certificate of approval required for out-of-state winery or manufacturer to sell or ship to Washington distributors or importers—Reports—Agreement with board—Fee.** (*Effective July 1, 1998.*) A United States winery or manufacturer of wine, located outside the state of Washington, must hold a certificate of approval (W7) to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors or importers. The certificate of approval shall not be granted unless and until such winery or manufacturer of wine shall have made a written agreement with the board to furnish to the board, on or before the twentieth 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 distributor or importer, during the preceding month, and shall further have agreed with the board, that such wineries or manufacturers, and all general sales corporations or agencies maintained by them, and all of their trade representatives, 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. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate. [1997 c 321 § 7; 1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1969 ex.s. c 21:** See note following RCW 66.04.010.

**66.24.210 Imposition of taxes on all wines and cider sold to wine distributors and liquor control board—Additional taxes imposed—Distributions.** (*Effective July 1, 1998.*) (1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. There is hereby

imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner 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. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. 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 the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. The additional taxes imposed by this subsection (3) shall cease to be imposed on July 1, 2001. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(37) when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must. [1997 c 321 § 8; 1996 c 118 § 1; 1995 c 232 § 3; 1994 sp.s. c 7 § 901 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 160 § 2; 1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 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 24-A 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Effective date—1996 c 118:** "This act shall take effect July 1, 1996." [1996 c 118 § 2.]

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** "Sections 901 through 909, chapter 7, Laws of 1994 sp. sess. shall be submitted as a single ballot measure to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof unless section 13, chapter 2, Laws of 1994, has been declared invalid or otherwise enjoined or stayed by a court of competent jurisdiction." [1994 sp.s. c 7 § 911 (Referendum Bill No. 43, approved November 8, 1994).]

**Reviser's note:** Sections 901 through 909, chapter 7, Laws of 1994 sp. sess., were adopted and ratified by the people at the November 8, 1994, general election.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1993 c 160:** See note following RCW 66.12.180.

**Effective dates—1989 c 271:** See note following RCW 66.28.200.

**Severability—1989 c 271:** See note following RCW 9.94A.310.

**Construction—Effective dates—Severability—1987 c 452:** See RCW 15.88.900 through 15.88.902.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Floor stocks tax:** "There is hereby imposed upon every licensed wine distributor who possesses wine for resale upon which the tax has not been paid under section 2, chapter 204, Laws of 1973, a floor stocks tax of sixty-five cents per wine gallon on wine in his or her possession or under his or her control on June 30, 1973. Each such distributor 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." [1997 c 321 § 9; 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:** See note following RCW 66.04.010.

*Giving away liquor prohibited—Exceptions:* RCW 66.28.040.

*No tax on wine shipped to bonded warehouse:* RCW 66.24.185.

**66.24.230 Monthly reports of winery, wine importer, and wine distributor—Prohibited, authorized sales.**

[1997 RCW Supp.—page 716]

(*Effective July 1, 1998.*) Every winery, wine importer, and wine distributor licensed under this title shall make monthly reports to the board pursuant to the regulations. Such winery, wine importer, and wine distributor shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [1997 c 321 § 10; 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—1997 c 321:** See note following RCW 66.24.010.

**Effective date—1969 ex.s. c 21:** See note following RCW 66.04.010.

**66.24.240 Domestic brewery's license—Fee—Breweries operating as distributors and/or retailers.** (*Effective July 1, 1998.*) (1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. [1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**66.24.244 Microbrewery's license—Endorsement for on-premises consumption—Fees—Determination of status as tavern or limited service restaurant.** (*Effective July 1, 1998.*) (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer of its own production. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) The board may issue an endorsement to this license allowing for on-premises consumption of beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a limited service restaurant as described in RCW 66.24.320. [1997 c 321 § 12.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.250 Beer distributor's license—Fee.** (*Effective July 1, 1998.*) There shall be a license for beer distributors

to sell beer, purchased from licensed Washington breweries, beer certificate of approval holders (B5), licensed beer importers, or suppliers of foreign beer located outside the state of Washington, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit. [1997 c 321 § 13; 1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**66.24.260 Repealed.** (*Effective July 1, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.261 Beer importer's license—Principal office—Report—Labels—Fee.** (*Effective July 1, 1998.*) There shall be a license for beer importers that authorizes the licensee to import beer manufactured within the United States by certificate of approval holders (B5) into the state of Washington. The licensee may also import beer manufactured outside the United States.

(1) Beer so imported may be sold to licensed beer distributors or exported from the state.

(2) 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 this license.

(3) 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 a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [1997 c 321 § 14.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.270 Manufacturer's monthly report to board of quantity of malt liquor sales made to beer distributors—Certificate of approval and report for out-of-state or imported beer—Fee.** (*Effective July 1, 1998.*) (1) Every person, firm or corporation, holding a license to manufacture malt liquors within the state of Washington, shall, on or before the twentieth 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 distributor within the state of Washington.

(2) A United States brewery or manufacturer of beer, located outside the state of Washington, must hold a certificate of approval (B5) to allow sales and shipment of the certificate of approval holder's beer to licensed Washington beer distributors or importers. The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer shall have made a written agreement with the board to furnish to the board, on or before the twentieth 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 distributor or importer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer and all general sales corporations or agencies maintained by them, and all of their trade representatives, 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. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate. [1997 c 321 § 15; 1981 1st ex.s. c 5 § 35; 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes.** (*Effective until July 1, 1998.*) (1) 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 and thirty cents 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 thirty cents per barrel of thirty-one gallons. Any brewer or beer wholesaler whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer shall be sold by brewers and wholesalers in sealed barrels or packages. The moneys collected under this subsection shall be distributed as follows: (a) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (b) of the remaining moneys: (i) Twenty

percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (ii) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(2) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The tax imposed under this section shall not apply to "strong beer" as defined in this title. [1997 c 451 § 1; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

**Effective date—1997 c 451:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 451 § 5.]

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1989 c 271:** See note following RCW 66.28.200.

**Severability—1989 c 271:** See note following RCW 9.94A.310.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—1965 ex.s. c 173:** See note following RCW 82.98.030.  
*Giving away of liquor prohibited—Exceptions:* RCW 66.28.040.

**66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes.** (*Effective July 1, 1998.*) (1) Any microbrewer or domestic brewery or beer distributor 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 brewery or beer distributor 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 and thirty cents 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 thirty cents per barrel of thirty-one gallons. Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer shall be sold by breweries and distributors in sealed barrels or packages. The moneys collected under this subsection shall be distributed as follows: (a) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (b) of the remaining moneys: (i) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (ii) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(2) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051,

as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The tax imposed under this section shall not apply to "strong beer" as defined in this title. [1997 c 451 § 1; 1997 c 321 § 16; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Reviser's note: This section was amended by 1997 c 321 § 16 and by 1997 c 451 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 451:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 451 § 5.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1989 c 271:** See note following RCW 66.28.200.

**Severability—1989 c 271:** See note following RCW 9.94A.310.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—1965 ex.s. c 173:** See note following RCW 82.98.030. *Giving away of liquor prohibited—Exceptions: RCW 66.28.040.*

**66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee. (Effective July 1, 1998.)** (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 distributor's license, a microbrewer's license, a domestic brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have applied for and received a representative's license: PROVIDED, HOWEVER, That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every representative'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 representative's licenses issued for representation of specific classes of eligible employers;

(3) Every application for a representative'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 distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for a representative's license shall be twenty-five dollars per year;

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's license, contact retail licensees of the board only in goodwill activities pertaining to spirituous liquor products. [1997 c 321 § 17; 1981 1st ex.s. c 5 § 36; 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 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**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.]

**Effective date—1969 ex.s. c 21:** See note following RCW 64.04.010.

**66.24.320 Limited service restaurant license—Containers—Fee—Caterer's endorsement. (Effective July 1, 1998.)** There shall be a limited service restaurant license to sell beer or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under the endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society



or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived. [1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—1987 c 458:** See note following RCW 48.21.160.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180.

**66.24.330 Tavern license—Fees. (Effective July 1, 1998.)** There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, shall pay the full amount of four hundred dollars. [1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 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 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—1987 c 458:** See note following RCW 48.21.160.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**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 Repealed. (Effective July 1, 1998.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.350 Snack bar license—Fee. (Effective July 1, 1998.)** There shall be a beer retailer's license to be designated as a snack bar license to sell beer by the opened bottle or can at retail, for consumption upon the premises only, such license to be issued to places where the sale of beer is not the principal business conducted; fee one hundred twenty-five dollars per year. [1997 c 321 § 20; 1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

**Effective date—1997 c 321:** See note following RCW 66.24.010

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180.

**66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. (Effective July 1, 1998.)** There shall be a beer and wine retailer's license that may be combined only with the on-premises licenses described in either RCW 66.24.320 or 66.24.330. The combined license permits the sale of beer and wine for consumption off the premises.

(1) Beer and wine sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler.

(2) 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.

(3) Licensees holding this type of license also may sell malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200.

(4) The board may impose conditions upon the issuance of this license to best protect and preserve the health, safety, and welfare of the public.

(5) The annual fee for this license shall be one hundred twenty dollars. [1997 c 321 § 21.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—International export endorsement. (Effective July 1, 1998.)** There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing fortified wine at the establishment; and

(c) Whether the sale of fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of

fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer and wine.

(a) Any beer or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license. [1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180. *Employees under eighteen allowed to handle beer or wine:* RCW 66.44.340.

**66.24.370 Repealed.** (*Effective July 1, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory.** (*Effective July 1, 1998.*) (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer

and only table wine, if the board finds upon issuance or renewal of the license that the sale of fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing fortified wine at the establishment; and

(c) Whether the sale of fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer and/or wine. [1997 c 321 § 23.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.375 "Society or organization" defined for certain purposes.** (*Effective July 1, 1998.*) "Society or organization" as used in RCW 66.24.380 means a not-for-profit group organized and operated solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes. No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the secretary of state or the federal internal revenue service as a nonprofit organization may submit such registration as proof that it is a not-for-profit group. [1997 c 321 § 61; 1981 c 287 § 2.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Effective date—1981 c 287:** "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, 1981." [1981 c 287 § 3.]

**66.24.380 Special occasion license—Fee—Penalty.** (*Effective July 1, 1998.*) There shall be a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or agency without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW. [1997 c 321 § 24; 1988 c 200 § 2; 1981 1st ex.s. c 5 § 43; 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

*"Society or organization" defined for certain purposes: RCW 66.24.375.*

**66.24.395 Interstate common carrier's licenses—Class CCI—Fees—Scope. (Effective July 1, 1998.)** (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 seven hundred fifty dollars per annum (class CCI-1): PROVIDED, 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) 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,

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subject to the conditions provided in subsection (1)(b) of this section. The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [1997 c 321 § 25; 1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**66.24.400 Liquor by the drink, full service restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when. (Effective July 1, 1998.)** There shall be a retailer's license, to be known and designated as a full service restaurant 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: PROVIDED, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: PROVIDED FURTHER, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such 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 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 full service restaurant license under the provisions and limitations of this title. [1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Effective date—1986 c 208:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2.]

**Severability—1949 c 5:** See RCW 66.98.080.

**66.24.420 Liquor by the drink, full service restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (Effective July 1, 1998.)** (1) The full service restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a full service restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

|                                     |         |
|-------------------------------------|---------|
| Less than 50% dedicated dining area | \$2,000 |
| 50% or more dedicated dining area   | \$1,600 |

Service bar only \$1,000

(b) The annual fee for said license when issued to any other full service restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) 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.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, 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 or privately owned civic or convention 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.

(e) 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 or, in the case of a full service restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVID-

ED, 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 full service restaurant 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 full service restaurant 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 full service restaurant licenses issued in the state of Washington by the board, not including full service private club licenses, 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 full service restaurant license to any applicant if in the opinion of the board the full service restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under such endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived. [1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 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 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—1949 c 5:** See RCW 66.98.080.

**66.24.425 Liquor by the drink, full service restaurant license—Restaurants not serving the general public. (Effective July 1, 1998.)** (1) The board may, in its discretion, issue a full service restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered full service restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to full service restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap. [1997 c 321 § 28; 1982 c 85 § 3.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.440 Liquor by the drink, full service restaurant, full service private club, and sports entertainment facility license—Purchase of liquor by licensees—Discount. (Effective July 1, 1998.)** Each full service restaurant, full service private club, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such 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. [1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—1949 c 5:** See RCW 66.98.080.

**66.24.450 Liquor by the drink, full service private club license—Qualifications—Fee. (Effective July 1, 1998.)** (1) No club shall be entitled to a full service private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private 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;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private 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 private club, where the sale of liquor is incidental to the main purposes of the \*private club, as defined in RCW 66.04.010(7).

(2) The annual fee for a full service private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year. [1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 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.]

**\*Reviser's note:** "Club" is defined in RCW 66.04.010(7).

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Severability—1949 c 5:** See RCW 66.98.080.

**66.24.452 Private club beer and wine license—Fee. (Effective July 1, 1998.)** (1) There shall be a beer and wine license to be issued to a private club for sale of beer and wine for on-premises consumption.

(2) Beer and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year. [1997 c 321 § 31.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Beer and wine restaurant, tavern, snack bar, full service restaurant, full service private club, or beer and wine private club licensees. (Effective July 1, 1998.)** Subject to approval by the board, holders of beer and wine restaurant, tavern, snack bar, full service restaurant, full service private club, or beer and wine private club 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. [1997 c 321 § 32; 1994 c 201 § 2; 1974 ex.s. c 65 § 1.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.490 Repealed. (Effective July 1, 1998.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.495 Nonprofit arts organization license—Fee. (Effective July 1, 1998.)** (1) There shall be a license to be designated as a nonprofit arts organization license. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural

exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor control board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [1997 c 321 § 33; 1981 c 142 § 1.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.500 Repealed.** (*Effective July 1, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.510 Repealed.** (*Effective July 1, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.540 Motel license—Fee.** (*Effective July 1, 1998.*) There shall be a retailer's license to be designated as a motel license. The motel license may be issued to a motel that holds no other class of license under this title. No license may be issued to a motel offering rooms to its guests

on an hourly basis. The license authorizes the licensee to sell, at retail, in locked honor bars, spirits in individual bottles not to exceed fifty milliliters, beer in individual cans or bottles not to exceed twelve ounces, and wine in individual bottles not to exceed one hundred eighty-seven milliliters, to registered guests of the motel for consumption in guest rooms. Each honor bar must also contain snack foods. No more than one-half of the guest rooms may have honor bars. The board shall charge a reasonable fee for this license. All spirits to be sold under the license must be purchased from the board. The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar. "Motel" as used in this section means a facility or place offering three or more self-contained units designated by number, letter, or some other method of identification to travelers and transient guests. As used in this section, "spirits," "beer," and "wine" have the meanings defined in RCW 66.04.010. [1997 c 321 § 34; 1993 c 511 § 1.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.550 Beer and wine gift delivery license—Fee—Limitations.** (*Effective July 1, 1998.*) There shall be a beer and wine retailer's license to be designated as a beer and wine gift delivery license to solicit, take orders for, sell, and deliver beer and/or wine in bottles and original packages to persons other than the person placing the order. A beer and wine gift delivery license may be issued only to a business solely engaged in the sale or sale and delivery of gifts at retail which holds no other class of license under this title or to a person in the business of selling flowers or floral arrangements at retail. No minimum beer and/or wine inventory requirement shall apply to holders of beer and wine gift delivery licenses. The fee for this license is seventy-five dollars per year. Delivery of beer and/or wine under a beer and wine gift delivery license shall be made in accordance with all applicable provisions of this title and the rules of the board, and no beer and/or wine so delivered shall be opened on any premises licensed under this title. A beer and wine gift delivery license does not authorize door-to-door solicitation of gift wine delivery orders. Deliveries of beer and/or wine under a beer and wine gift delivery license shall be made only in conjunction with gifts or flowers. [1997 c 321 § 35; 1989 c 149 § 1; 1986 c 40 § 1; 1982 c 85 § 10.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.24.560 Repealed.** (*Effective July 1, 1998.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**66.24.570 Sports/entertainment facility license—Fee—Caterer's endorsement.** (*Effective July 1, 1998.*) (1) There is a license for sports entertainment facilities to be designated as a sports/entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility

as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at special occasion locations at a specified date and place not currently licensed by the board. The privilege of selling and serving liquor under the endorsement is limited to members and guests of a society or organization as defined in RCW 66.24.375. Cost of the endorsement is three hundred fifty dollars.

(a) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(b) If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, the requirement that the society or organization be within the definition of RCW 66.24.375 is waived. [1997 c 321 § 36; 1996 c 218 § 1.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

## Chapter 66.28

### MISCELLANEOUS REGULATORY PROVISIONS

#### Sections

- 66.28.010 Manufacturers, importers, and distributors barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. (*Effective July 1, 1998.*)
- 66.28.030 Responsibility of brewer, domestic brewers and microbrewer, vintner, manufacturer holding certificate approval and importer for conduct of distributor—Penalties. (*Effective July 1, 1998.*)
- 66.28.040 Giving away of liquor prohibited—Exceptions.
- 66.28.050 Solicitation of orders prohibited. (*Effective July 1, 1998.*)
- 66.28.120 Malt liquor to be labeled—Contents.
- 66.28.150 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct courses of instruction on beer and wine.
- 66.28.155 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct educational activities on licensed premises of retailer.
- 66.28.170 Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited. (*Effective July 1, 1998.*)

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. (*Effective July 1, 1998.*)

66.28.190 Sales of nonliquor food products. (*Effective July 1, 1998.*)

66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller (*Effective July 1, 1998.*)

**66.28.010 Manufacturers, importers, and distributors barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.** (*Effective July 1, 1998.*) (1)(a) No manufacturer, importer, or distributor, 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 distributor 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 or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by an independent concessionaire which is not owned directly or indirectly by the manufacturer or property owner, the sales of liquor are incidental to the primary activity of operating the property as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. No manufacturer, importer, or distributor shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the 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 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a full service restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a full service restaurant premises on the property on which the primary manufacturing facility of the licensed domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned by the licensed domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(2) 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 34.05 RCW manufacturers, distributors, 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.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed

manufacturer. [1997 c 321 § 46. Prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 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—1997 c 321:** See note following RCW 66.24.010.

**Intent—1996 c 224:** See note following RCW 66.24.580.

**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.

*Giving away of liquor prohibited—Exceptions:* RCW 66.28.040.

**66.28.030 Responsibility of brewer, domestic brewers and microbrewer, vintner, manufacturer holding certificate approval and importer for conduct of distributor—Penalties.** (*Effective July 1, 1998.*) Every licensed brewer, domestic brewer and microbrewer, 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 distributor in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such brewer, domestic brewer and microbrewer, 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 distributor 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 distributor, 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 distributor 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. [1997 c 321 § 47; 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1975 1st ex.s. c 173:** See notes following RCW 66.08.050.

**Effective date—1969 ex.s. c 21:** See note following RCW 66.04.010.

**66.28.040 Giving away of liquor prohibited—Exceptions.** Except as permitted by the board under RCW 66.20.010, no brewer, wholesaler, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, by himself or herself, a clerk, servant, or agent, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a brewer, wholesaler, winery, distiller, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for

samples must be purchased at retail from the board; 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; nothing in this section shall prevent a brewery, winery, distillery, or wholesaler from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150 and 66.28.155; nothing in this section shall prevent a winery or wholesaler from furnishing wine without charge to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and any wine so furnished shall be used solely for such educational purposes, provided that the wine furnished shall be subject to the taxes imposed by RCW 66.24.210; nothing in this section shall prevent a brewer from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises. [1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 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.]

**Construction—Effective dates—Severability—1987 c 452:** See RCW 15.88.900 through 15.88.902.

**Severability—Effective date—1975 1st ex.s. c 173:** See notes following RCW 66.08.050.

**Effective date—1969 ex.s. c 21:** See note following RCW 66.04.010.

**66.28.050 Solicitation of orders prohibited.** (*Effective July 1, 1998.*) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as representative for the purchase or sale of liquor except as authorized by RCW 66.24.310 or by RCW 66.24.550. [1997 c 321 § 49; 1982 c 85 § 11; 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—1997 c 321:** See note following RCW 66.24.010.

**Effective date—1975-'76 2nd ex.s. c 74:** See note following RCW 66.24.310.

**Effective date—1969 ex.s. c 21:** See note following RCW 64.04.010.

**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," "malt liquor," "lager," "stout," or "porter," on the outside of the packages. [1997 c 100 § 1; 1982 c 39 § 2; 1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306-44.]

**Severability—1982 c 39:** See note following RCW 66.04.010.

**66.28.150 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct courses of instruction on beer and wine.** A brewery, winery, distillery, wholesaler, or its licensed agent may, without charge,

instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor. The brewery, winery, distillery, wholesaler, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the brewery, winery, distillery, or wholesaler, at the premises of a retail licensee, or elsewhere. [1997 c 39 § 2; 1982 1st ex.s. c 26 § 1.]

**66.28.155 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct educational activities on licensed premises of retailer.** A brewery, winery, distillery, wholesaler, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a brewery, winery, distillery, wholesaler, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, or distillery and wholesaler appearances in an effort to equitably represent the industries. Nothing in this section permits a brewery, winery, distillery, wholesaler, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.010. [1997 c 39 § 3; 1984 c 196 § 1.]

**66.28.170 Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited.** (*Effective July 1, 1998.*) It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a brewery license, or a domestic winery license to discriminate in price in selling to any purchaser for resale in the state. [1997 c 321 § 50; 1985 c 226 § 3.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda.** (*Effective July 1, 1998.*) It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic brewer's license, a microbrewer's license, a beer importer's license, a beer

distributor's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) All price postings filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every brewery and winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a brewery or winery shall be uniform prices to all distributors on a state-wide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by

rule of the board, except such percentage shall be not less than ten percent.

(c) No brewery, winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No brewery or winery may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the brewery or winery and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) All prices, contracts, and memoranda filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential. [1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.28.190 Sales of nonliquor food products.** (*Effective July 1, 1998.*) RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food products to ensure that such persons are in compliance with RCW 66.28.010.

For the purpose of this section, "nonliquor food products" includes all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products. [1997 c 321 § 52; 1988 c 50 § 1.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller.** (*Effective July 1, 1998.*) Licensees holding a limited service restaurant or a tavern license in combination with an off-premises beer and wine retailer's license may sell malt liquor in kegs or other containers capable of holding four gallons

or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240. Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(1) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(2) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(3) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(a) The purchaser is of legal age to purchase, possess, or use malt liquor;

(b) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(c) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(4) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(5) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control. [1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Effective dates—1989 c 271:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and  
(2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

**Severability—1989 c 271:** See note following RCW 9.94A.310.

## Chapter 66.44

### ENFORCEMENT—PENALTIES

#### Sections

66.44.190 Sales on university grounds prohibited—Exceptions. (*Effective July 1, 1998.*)

66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees. (*Effective July 1, 1998.*)

**66.44.190 Sales on university grounds prohibited—Exceptions.** (*Effective July 1, 1998.*) 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 66.24.481. [1997 c 321 § 62; 1979 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.]

**\*Reviser's note:** "Class H licenses" were redesignated as "full service restaurant, full service private club, and sports entertainment facility licenses" by 1997 c 321 §§ 26-31.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**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.]

**66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees. (Effective July 1, 1998.)** (1) Except as otherwise provided by RCW 66.44.316 and 66.44.350, it shall be a misdemeanor:

(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a private club full service license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age. [1997 c 321 § 53; 1994 c 201 § 8; 1981 1st ex.s. c 5 § 24; 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.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

## Chapter 66.98 CONSTRUCTION

### Sections

66.98.060 Rights of full service restaurant licensees—1949 c 5. (*Effective July 1, 1998.*)

**66.98.060 Rights of full service restaurant licensees—1949 c 5. (Effective July 1, 1998.)** Notwithstanding any provisions of chapter 62, Laws of 1933 ex. sess., 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 full service restaurant license to sell beer, wine, and spirituous liquor in this state in accordance with the terms of chapter 5, Laws of 1949. [1997 c 321 § 54; 1949 c 5 § 14; No RRS. Formerly RCW 66.24.460.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

## Title 67

### SPORTS AND RECREATION— CONVENTION FACILITIES

#### Chapters

- 67.08 Boxing, sparring, and wrestling.
- 67.16 Horse racing.
- 67.28 Public stadium, convention, performing and visual arts facilities.
- 67.38 Cultural arts, stadium and convention districts.
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#### Chapter 67.08

### BOXING, SPARRING, AND WRESTLING

#### Sections

- 67.08.002 Definitions.
- 67.08.010 Licenses for boxing, martial arts, and wrestling events—Telecasts—Revocation, suspension, and denial.
- 67.08.015 Duties of department—License issuance, denial, revocation, and suspension—Exemptions—Rules.
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- 67.08.240 Unprofessional conduct—What constitutes.
- 67.08.250 Unlicensed practice or conduct violating chapter—Investigation—Cease and desist orders—Injunction in name of state—Criminal liability not precluded—Penalty.
- 67.08.260 Violation of injunction—Penalties—Jurisdiction.
- 67.08.300 Immunity of director and director's agents.
- 67.08.903 Severability—1997 c 205.

**67.08.002 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Amateur" means a person who engages in athletic activities as a pastime and not as a professional.

(2) "Boxing" means a contest in which the contestants exchange blows with their fists, but does not include professional wrestling.

(3) "Department" means the department of licensing.

(4) "Director" means the director of the department of licensing or the director's designee.

(5) "Event" includes, but is not limited to, a boxing, wrestling, or martial arts contest, sparring, fisticuffs, match, show, or exhibition.

(6) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

(7) "Gross receipts" means: The amount received from the sale of souvenirs, programs, and other concessions received by the promoter; and the face value of all tickets sold and complimentary tickets redeemed.

(8) "Kickboxing" means a type of boxing in which blows are delivered with the hand and any part of the leg below the hip, including the foot.

(9) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis.

(10) "Professional" means a person who has received or competed for money or other articles of value for participating in an event.

(11) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event, or shows or causes to be shown in this state a closed circuit telecast of a match involving a professional participant whether or not the telecast originates in this state.

(12) "Tough man/rough man contest or competition" means an event that utilizes unlicensed, untrained, or otherwise licensed participants who engage in unsanctioned activities that do not comply with this chapter, including a full-contact, tournament-style martial arts contest, match, show, or exhibition in which contestants compete more than once per day.

(13) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a physical struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both. [1997 c 205 § 1; 1993 c 278 § 8; 1989 c 127 § 1.]

**67.08.010 Licenses for boxing, martial arts, and wrestling events—Telecasts—Revocation, suspension, and denial.** (1) The department shall have power to issue and for cause to revoke, suspend, or deny a license to conduct, hold, or promote boxing, martial arts, or wrestling events or closed circuit telecasts of these events as provided in this

chapter under such terms and conditions and at such times and places as the department may determine.

(2) In case the department revokes, suspends, or denies any license or issues a fine, such applicant, or license shall be entitled, upon application, to a hearing to be held under chapter 34.05 RCW, the administrative procedure act. [1997 c 205 § 2; 1993 c 278 § 10; 1989 c 127 § 13; 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.]

**67.08.015 Duties of department—License issuance, denial, revocation, and suspension—Exemptions—Rules.**

(1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause deny, revoke, or suspend a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) 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

(b) Are entirely amateur events promoted on a nonprofit basis or for charitable purposes;

are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section. [1997 c 205 § 3; 1993 c 278 § 12; 1989 c 127 § 14; 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.]

**67.08.017 Director—Powers.** The director or the director's designee has the following authority in administering this chapter:

(1) Adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) Issue subpoenas and administer oaths in connection with an investigation, hearing, or proceeding held under this chapter;

(3) Take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(4) Compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, conduct practice reviews;

(6) Take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) Use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However,

the director or the director's designee shall make the final decision in the hearing;

(8) Enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(9) Adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, impose sanctions against a license applicant or license holder as provided by this chapter;

(11) Enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(12) Designate individuals authorized to sign subpoenas and statements of charges;

(13) Employ the investigative, administrative, and clerical staff necessary for the enforcement of this chapter;

(14) Compel the attendance of witnesses at hearings; and

(15) Establish and assess fines for violations of this chapter that may be subject to payment from a contestant's purse. [1997 c 205 § 4; 1993 c 278 § 11.]

#### **67.08.030 Promoters—Bond—Medical insurance.**

(1) Every promoter, as a condition for receiving a license, shall file with the department a surety bond in an amount to be determined by the department, but not less than ten thousand dollars, to cover all of the event locations applied for within the state during the license period, conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the observance of all rules of the department.

(2) Boxing promoters must obtain medical insurance in an amount set by the director, but not less than fifty thousand dollars, to cover any injuries incurred by participants at the time of each event held in this state and provide proof of insurance to the department seventy-two hours before each event. The evidence of insurance must specify, at a minimum, the name of the insurance company, the insurance policy number, the effective date of the coverage, and evidence that each participant is covered by the insurance. The promoter must pay any deductible associated with the insurance policy.

(3) In lieu of the insurance requirement of subsection (2) of this section, a promoter of the boxing event who so chooses may, as a condition for receiving a license under this chapter, file proof of medical insurance coverage that is in effect for the entire term of the licensing period.

(4) The department shall cancel a boxing event if the promoter fails to provide proof of medical insurance within the proper time frame. [1997 c 205 § 5; 1993 c 278 § 13; 1989 c 127 § 6; 1933 c 184 § 9; RRS § 8276-9.]

**67.08.050 Statement and report of event—Tax on gross receipts—Complimentary tickets.** (1) Any promoter

shall within seven days prior to the holding of any event file with the department a statement setting forth the name of each licensee who is a potential participant, his or her manager or managers, and such other information as the department may require. Participant changes regarding a wrestling event may be allowed after notice to the department, if the new participant holds a valid license under this chapter. The department may stop any wrestling event in which a participant is not licensed under this chapter.

(2) Upon the termination of any event the promoter shall file with the designated department representative a written report, duly verified as the department may require showing the number of tickets sold for the event, the price charged for the tickets and the gross proceeds thereof, and such other and further information as the department may require. The promoter shall pay to the department at the time of filing the report under this section a tax equal to five percent of such gross receipts. However, the tax may not be less than twenty-five dollars. The five percent of such gross receipts shall be immediately paid by the department into the state general fund.

(3) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. It must include charges and fees, such as dinner, gratuity, parking, surcharges, or other charges or fees that are charged to and must be paid by the customer in order to view the event. The number of untaxed complimentary tickets shall be limited to five percent of the total tickets sold per event location, not to exceed three hundred tickets. All complimentary tickets exceeding this exemption shall be subject to taxation. [1997 c 205 § 6; 1993 c 278 § 15; 1989 c 127 § 7; 1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

**Emergency—Effective date—1939 c 54:** "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

**67.08.060 Inspectors—Duties—Fee and travel expenses for attending events.** The department may appoint official inspectors at least one of which, in the absence of a member of the department, shall be present at any event held under the provisions of this chapter. Such inspectors shall carry a card signed by the director evidencing their authority. It shall be their duty to see that all rules of the department and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any event, and such inspector is authorized to receive from the licensee conducting the event the statement of receipts herein provided for and to immediately transmit such reports to the department. Each inspector shall receive a fee and travel expenses from the promoter to be set by the director for each event officially attended. [1997 c 205 § 7; 1993 c 278 § 17; 1989 c 127 § 16; 1988 c 19 § 2; 1975-'76 2nd ex.s. c 34 § 154; 1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

**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—Rules.** A boxing, kickboxing, or martial art[s]



event held in this state may not be for more than ten rounds and no one round of any bout shall be scheduled for longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state, regional, national, or world championships the department may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds. A contestant in any boxing event under this chapter may not be permitted to wear gloves weighing less than eight ounces. The director shall adopt rules to assure clean and sportsman-like conduct on the part of all contestants and officials, and the orderly and proper conduct of the event in all respects, and to otherwise make rules consistent with this chapter, but such rules shall apply only to events held under the provisions of this chapter. [1997 c 205 § 8; 1993 c 278 § 18; 1989 c 127 § 8; 1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

**67.08.090 Physician's attendance—Examination of contestants.** (1) Each contestant for boxing events shall be examined within twenty-four hours before the contest by a competent physician appointed by the department. The physician shall report in writing and over his or her signature before the event the physical condition of each and every contestant to the inspector present at such contest. No contestant whose physical condition is not approved by the examining physician shall be permitted to participate in any event. Blank forms of physicians' report shall be provided by the department and all questions upon such blanks shall be answered in full. The examining physician shall be paid a fee and travel expenses by the promoter.

(2) The department may require that a physician be present at a wrestling event. The promoter shall pay any physician present at a wrestling event. A boxing event may not be held unless a licensed physician of the department or his or her duly appointed representative is present throughout the event.

(3) Any practicing physician and surgeon may be selected by the department as the examining physician. Such physician present at such contest shall have authority to stop any event when in the physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the physician's duty to stop the event.

(4) The department may have a participant in a wrestling event examined by a physician appointed by the department prior to the event. A participant in a wrestling event whose condition is not approved by the examining physician shall not be permitted to participate in the event. [1997 c 205 § 9; 1993 c 278 § 19; 1989 c 127 § 9; 1933 c 184 § 15; RRS § 8276-15.]

**67.08.100 Annual licenses—Fees—Qualifications—Revocation—Exceptions.** (1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspectors; (g) judge; (h) timekeeper; (i) announcers; and (j) physicians.

(2) Any license may be revoked, suspended, or denied by the director for a violation of this chapter or a rule adopted by the director.

(3) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(4) The referees, judges, timekeepers, physicians, and inspectors for any boxing event shall be designated by the department from among licensed officials.

(5) The referee for any wrestling event shall be provided by the promoter and shall be licensed as a wrestling participant.

(6) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(7) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

(8) A person may not be issued a license unless they are at least eighteen years of age.

(9) This section shall not apply to contestants or participants in events at which only amateurs are engaged in contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any recognized amateur sanctioning body recognized by the department, holding and promoting athletic events and where all funds are used primarily for the benefit of their members. Upon request of the department, a promoter, contestant, or participant shall provide sufficient information to reasonably determine whether this chapter applies. [1997 c 205 § 10; 1997 c 58 § 864; 1993 c 278 § 20; 1989 c 127 § 10; 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.]

**Reviser's note:** \*(1) 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

(2) This section was amended by 1997 c 58 § 864 and by 1997 c 205 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2) For rule of construction, see RCW 1.12.025(1).

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**67.08.110 Participation in purse or fee—Conducting sham or fake event—Revocation of license.** Any person or any member of any group of persons or corporation promoting boxing events who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing event shall be subject to license revocation and such revoked licensee shall not be entitled to receive any license issued under this chapter.

[1997 c 205 § 11; 1993 c 278 § 21; 1989 c 127 § 11; 1933 c 184 § 17; RRS § 8276-17.]

**67.08.120 Violation of rules—Penalties.** Any unlicensed participant contestant or licensee who violates any rule of the department shall be fined, suspended, revoked, or any combination thereof, by order of the director. Assessed fines shall not exceed five hundred dollars for each violation of this chapter or any rule of the department. [1997 c 205 § 12; 1993 c 278 § 22; 1989 c 127 § 12; 1933 c 184 § 18; RRS § 8276-18.]

**67.08.130 Failure to make report—Additional tax—Notice—Penalties for delinquency.** Whenever any licensee shall fail to make a report of any event within the time prescribed by this chapter or when such report is unsatisfactory to the department, the director may examine the books and records of such licensee; he or she may subpoena and examine under oath any officer of such licensee and such other person or persons as he or she may deem necessary to a determination of the total gross receipts from any event 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 be subject to revocation of its license and shall be disqualified from receiving any new license. In addition, such licensee shall be 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. [1997 c 205 § 13; 1993 c 278 § 23; 1933 c 184 § 19; RRS § 8276-19.]

**67.08.140 Penalty for conducting events without license—Injunctions.** Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing or wrestling events within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting the events excluded from the operation of this chapter by RCW 67.08.015. The attorney general, each prosecuting attorney, the department, or any citizen of any county where any person, club, corporation, organization, association, fraternal society, promoter, or participant shall threaten to hold, or appears likely to hold or participate in athletic events in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, fraternal society, promoter, or participant from holding or participating in the event. [1997 c 205 § 14; 1993 c 278 § 24; 1989 c 127 § 17; 1988 c 19 § 3; 1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276-22.]

**67.08.170 Security—Promoter's responsibility.** A promoter shall ensure that adequate security personnel are in attendance at a wrestling or boxing event to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the

department. [1997 c 205 § 15; 1993 c 278 § 25; 1989 c 127 § 3.]

**67.08.180 Prohibitions—Penalties.** (1) It is a violation of this chapter for any promoter or person associated with or employed by any promoter to destroy any ticket or ticket stub, whether sold or unsold, within three months after the date of any event.

(2) It is a violation of this chapter for a wrestling participant to deliberately cut himself or herself or otherwise mutilate himself or herself while participating in a wrestling event.

(3) The department shall revoke the license of a licensee convicted under chapter 69.50 RCW.

(4) The director shall revoke the license of a licensee testing positive for illegal use of a controlled substance as defined in RCW 69.50.101, and shall deny the application of an applicant testing positive for a controlled substance as defined in RCW 69.50.101.

(5) The striking of any person that is not a licensed participant at a wrestling event constitutes grounds for suspension, fine, revocation, or any combination thereof. [1997 c 205 § 16; 1989 c 127 § 4.]

**67.08.200 Unprofessional conduct—Written complaint—Investigation—Immunity of complainant.** A person, including but not limited to a consumer, licensee, corporation, organization, and state and local governmental agency, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the complaint. If the department determines that the complaint merits investigation or if the department has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the department shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1997 c 205 § 17.]

**67.08.210 Unprofessional conduct—Investigation—Notice of charge—Request for hearing—Time of hearing—Notice.** (1) If the department determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, the department shall prepare and serve upon the license holder or applicant a statement of charge or charges. The statement of charge or charges must be accompanied by a notice that the license holder or applicant may request a hearing to contest the charge or charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order under RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days before the hearing, specifying the time, date, and place of hearing. [1997 c 205 § 18.]

**67.08.220 Unprofessional conduct—Order upon finding—Penalties—Costs.** Upon a finding that a license holder or applicant has committed unprofessional conduct the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Requiring the satisfactory completion of a specific program of remedial education;
- (4) Compliance with conditions of probation for a designated period of time;
- (5) Payment of a fine not to exceed five hundred dollars for each violation of this chapter;
- (6) Denial of the license request;
- (7) Corrective action, including paying contestants the contracted purse or compensation; or
- (8) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1997 c 205 § 19.]

**67.08.230 Fine—Order for payment—Enforcement—Proof of validity.** If an order for payment of a fine is made as a result of a hearing and timely payment is not made as directed in the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to any licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under chapter 34.05 RCW.

In addition for enforcement of an order of payment of a fine the director's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1997 c 205 § 20.]

**67.08.240 Unprofessional conduct—What constitutes.** The following conduct, acts, or conditions constitute unprofessional conduct for a license holder or applicant under this chapter:

(1) Conviction of a gross misdemeanor, felony, or the commission of an act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96 RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement of a license;

(3) Advertising that is false, fraudulent, or misleading;

(4) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(5) Suspension, revocation, or restriction of a license to act as a professional athletic licensee by competent authority in a state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) Violation of a statute or administrative rule regulating professional athletics;

(7) Failure to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into by the director;

(9) Aiding or abetting an unlicensed person to act in a manner that requires a professional athletics licensee [license];

(10) Misrepresentation or fraud in any aspect of the conduct of a professional athletics event; and

(11) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the department or by the use of threats or harassment against any person to prevent them from providing evidence in a disciplinary proceeding or other legal action. [1997 c 205 § 21.]

**67.08.250 Unlicensed practice or conduct violating chapter—Investigation—Cease and desist orders—Injunction in name of state—Criminal liability not precluded—Penalty.** (1) The director shall investigate complaints concerning unlicensed practice or conducting boxing, martial arts, or wrestling events in violation of this chapter. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person violating this chapter from criminal prosecution, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order may be enforced under RCW 7.71.030. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the director, a board, or a person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin a person practicing without a license from engaging in the practice until the required license is secured. However, the injunction shall

not relieve the person so practicing without a license from criminal prosecution for the practice, but the remedy by injunction shall be in addition to any criminal liability.

(3) The practice without a license when required by this chapter constitutes a gross misdemeanor. [1997 c 205 § 22.]

#### **67.08.260 Violation of injunction—Penalties—**

**Jurisdiction.** A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing an 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. [1997 c 205 § 23.]

**67.08.300 Immunity of director and director's agents.** The director or individuals acting on the director's behalf are immune from suit in an action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter. [1997 c 205 § 24.]

**67.08.903 Severability—1997 c 205.** 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. [1997 c 205 § 26.]

## **Chapter 67.16**

### **HORSE RACING**

#### Sections

|           |  |
|-----------|--|
| 67.16.050 | Application for meet—Issuance of license—Fee—<br>Cancellation, grounds, procedure. |
| 67.16.105 | Gross receipts—Commission's percentage—Distributions.                              |
| 67.16.190 | Repealed.  |
| 67.16.200 | Satellite locations—Parimutuel wagering—Simulcasts—<br>Common pools—Conduct.       |
| 67.16.250 | Repealed.  |

**67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure.** 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 include not less than six nor more than eleven live races per day, and for

which a fee shall be paid daily in advance of five hundred dollars for each live race day for those licensees which had gross receipts from parimutuel machines in excess of fifty million dollars in the previous year and two hundred dollars for each day for meets which had gross receipts from parimutuel machines at or below fifty million dollars in the previous year; in addition any newly authorized live race meets shall pay two hundred dollars per day for the first year: **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. [1997 c 87 § 2; 1985 c 146 § 3; 1982 c 32 § 2; 1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

**Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87:** See notes following RCW 67.16.200.

**Severability—1985 c 146:** See note following RCW 67.16.010.

**Severability—1982 c 32:** See note following RCW 67.16.020.

**67.16.105 Gross receipts—Commission's percentage—Distributions.** (1) Licensees of race meets that are nonprofit in nature, are of ten days or less, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than two hundred fifty thousand dollars, the licensee shall withhold and pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are two hundred fifty thousand dollars or less, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee. Payments to nonprofit race

meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment. [1997 c 87 § 3; 1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

**Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87:** See notes following RCW 67.16.200.

**Intent—1995 c 173:** "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

**Effective date—1995 c 173:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 173 § 3.]

**Intent—1994 c 159:** "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of nonprofit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

**Effective date—1994 c 159:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 159 § 4.]

**Intent—1993 c 170:** "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

**Effective date—1993 c 170:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 170 § 3.]

**Severability—1985 c 146:** See note following RCW 67.16.010.

**Severability—1982 c 32:** See note following RCW 67.16.020.

**67.16.190 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.16.200 Satellite locations—Parimutuel wagering—Simulcasts—Common pools—Conduct.** (1) A racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering on its program at a satellite location or locations within the state of Washington. The sale of parimutuel pools at satellite locations shall be conducted only during the licensee's race meet and simultaneous to all parimutuel wagering activity conducted at the licensee's live racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location. A satellite location shall not be operated within twenty driving miles of any class 1 racing facility. For the purposes of this section, "driving miles" means miles measured by the most direct route as determined by the commission; and

(b) A licensee shall not conduct satellite wagering at any satellite location within sixty driving miles of any other racing facility conducting a live race meet.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

(4) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to locations outside of the state of Washington approved by the commission and in accordance with the interstate horse racing act of 1978 (15 U.S.C. Sec. 3001 to 3007) or any other applicable laws. The commission may permit parimutuel pools on the simulcast races to be combined in a common pool. A racing association that transmits simulcasts of its races to locations outside this state shall pay at least fifty percent of the fee that it receives for sale of the simulcast signal to the horsemen's purse account for its live races after first deducting the actual cost of sending the signal out of state.

(5) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to licensed racing associations located within the state of Washington and approved by the commission for the receipt of the simulcasts. The commission shall permit parimutuel pools on the simulcast races to be combined in a common pool. The fee for in-state, track-to-track simulcasts shall be five and one-half percent of the gross parimutuel receipts generated at the receiving location and payable to the sending racing association. A racing association that transmits simulcasts of its races to other licensed racing associations shall pay at least fifty percent of the fee that it receives for the simulcast signal to the horsemen's purse account for its live race meet after first deducting the actual cost of sending the simulcast signal. A racing association that receives races simulcast from class 1 racing associations within the state shall pay at least fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price and the actual direct costs of importing the race.

(6) A class 1 racing association may be allowed to import simulcasts of horse races from out-of-state racing facilities. With the prior approval of the commission, the

class 1 racing association may participate in an interstate common pool and may change its commission and breakage rates to achieve a common rate with other participants in the common pool.

(a) The class 1 racing association shall make written application with the commission for permission to import simulcast horse races for the purpose of parimutuel wagering. Subject to the terms of this section, the commission is the sole authority in determining whether to grant approval for an imported simulcast race.

(b) During the conduct of its race meeting, a class 1 racing association may be allowed to import no more than one simulcast race card program during each live race day. A licensed racing association may also be approved to import one simulcast race of regional or national interest on each live race day. A class 1 racing association may be permitted to import two simulcast programs on two nonlive race days per each week during its live meet. A licensee shall not operate parimutuel wagering on more than five days per week. Parimutuel wagering on imported simulcast programs shall only be conducted at the live racing facility of a class 1 racing association.

(c) The commission may allow simulcast races of regional or national interest to be sent to satellite locations. The simulcasts shall be limited to one per day except for Breeder's Cup special events day.

(d) When open for parimutuel wagering, a class 1 racing association which imports simulcast races shall also conduct simulcast parimutuel wagering within its licensed racing enclosure on all races simulcast from other class 1 racing associations within the state of Washington.

(e) When not conducting a live race meeting, a class 1 racing association may be approved to conduct simulcast parimutuel wagering on imported simulcast races. The conduct of simulcast parimutuel wagering on the simulcast races shall be for not more than twelve hours during any twenty-four hour period, for not more than five days per week and only at its live racing facility.

(f) On any imported simulcast race, the class 1 racing association shall pay fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price of the imported race and the actual costs of importing the race.

(7) For purposes of this section, a class 1 racing association is defined as a licensee approved by the commission which conducts during each twelve-month period at least forty days of live racing within four successive calendar months. The commission may by rule increase the number of live racing days required to maintain class 1 racing association status.

(8) This section does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this section does not allow gaming of any nature or scope that was prohibited before April 19, 1997. This section is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of this section is to protect these industries from adverse economic impacts and to promote fan attendance at

class 1 racing facilities. Therefore, imported simulcast race card programs shall not be disseminated to any location outside the live racing facility of the class 1 racing association and a class 1 racing association is strictly prohibited from simulcasting imported race card programs to any location outside its live racing facility. [1997 c 87 § 4; 1991 c 270 § 10; 1987 c 347 § 1.]

**Findings—Purpose—1997 c 87:** "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this act does not allow gaming of any nature or scope that was prohibited before April 19, 1997." [1997 c 87 § 1.]

**Report by joint legislative audit and review committee—1997 c 87:** "(1) The joint legislative audit and review committee shall conduct an evaluation to determine the extent to which this act has achieved the following outcomes:

(a) The extent to which purses at Emerald Downs, Playfair, and Yakima Meadows have increased as a result of the provisions of this act;

(b) The extent to which attendance at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;

(c) The extent to which the breeding of horses in this state has increased specifically related to the provisions of this act;

(d) The extent to which the number of horses running at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;

(e) The extent to which nonprofit racetracks in this state have benefited from this act including the removal of the cap on the nonprofit race meet purse fund; and

(f) The extent to which Emerald Downs, Playfair, and Yakima Meadows are capable of remaining economically viable given the provisions of this act and the increase in competition for gambling or entertainment dollars.

(2) The joint legislative audit and review committee may provide recommendations to the legislature concerning modifications that could be made to existing state laws to improve the ability of this act to meet the above intended goals.

(3) The joint legislative audit and review committee shall complete a report on its finding by June 30, 2000. The report shall be provided to the appropriate committees of the legislature by December 1, 2000." [1997 c 87 § 5.]

**Severability—1997 c 87:** "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." [1997 c 87 § 7.]

**Effective date—1997 c 87:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 87 § 8.]

**67.16.250 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 67.28

PUBLIC STADIUM, CONVENTION, PERFORMING  
AND VISUAL ARTS FACILITIES

## Sections

|            |   |
|------------|---|
| 67.28.080  | Definitions.  |
| 67.28.090  | through 67.28.110 Repealed.   |
| 67.28.120  | Authorization to acquire and operate tourism-related facilities.  |
| 67.28.130  | Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.                         |
| 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.            |
| 67.28.181  | Special excise taxes authorized—Rates—Credits for city or town tax by county—Credit against state tax—Limits.                     |
| 67.28.1815 | Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation.                                   |
| 67.28.1817 | Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments. |
| 67.28.182  | Repealed.   |
| 67.28.184  | Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited.                                   |
| 67.28.185  | Repealed.   |
| 67.28.190  | Repealed.   |
| 67.28.200  | Special excise tax authorized—Exemptions may be established—Collection.   |
| 67.28.210  | Repealed.   |
| 67.28.240  | through 67.28.320 Repealed.   |
| 67.28.360  | Repealed.   |
| 67.28.370  | Repealed.   |
| 67.28.8001 | Reports by municipalities—Summary and analysis by department of community, trade, and economic development.                       |

**67.28.080 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" 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.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism

promotion agencies; and funding marketing of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture. [1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

**Intent—1997 c 452:** "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

**Severability—1997 c 452:** "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." [1997 c 452 § 24.]

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Effective date, application—1991 c 357:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect after immediately [effect immediately (May 21, 1991)]. This act applies retroactively to all actions taken under chapter 67.28 RCW on or after January 1, 1990." [1991 c 357 § 5.]

**67.28.090 through 67.28.110 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.120 Authorization to acquire and operate tourism-related facilities.** Any municipality is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire and to operate tourism-related facilities, whether located within or without such municipality. [1997 c 452 § 7; 1979 ex.s. c 222 § 1; 1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**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 tourism-related 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. [1997 c 452 § 8; 1979 ex.s. c 222 § 2; 1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment.** To carry out the purpos-



es 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 this chapter, 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. [1997 c 452 § 9; 1984 c 186 § 56; 1967 c 236 § 8.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.** (1) 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 this chapter, 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 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 owners 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 as provided in RCW 39.46.030, 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 owners 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 this chapter, 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 bond owners, 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 owner of any such bond may bring action against the municipality and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1997 c 452 § 10; 1983 c 167 § 168; 1979 ex.s. c 222 § 3; 1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**67.28.170 Power to lease all or part of facilities—Disposition of proceeds.** The legislative body of any municipality owning or operating tourism-related facilities acquired under 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 tourism-related 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 tourism-related facilities purposes. [1997 c 452 § 11; 1979 ex.s. c 222 § 4; 1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**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 subsections (2) and (3) 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 section 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 section 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 (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest

payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (iii) in other counties, for county-owned facilities for agricultural promotion. A county is exempt under this subsection in respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) If bonds have been issued under RCW 43.99N.020 and any necessary property transfers have been made under RCW 36.102.100, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in a county described in (i) or (ii) of this subsection (2)(c) 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 the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that 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 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under RCW 43.99N.060 after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(d) must be financially stable and have at least the following:

- (i) A legally constituted and working board of directors;
- (ii) A record of artistic, heritage, or cultural accomplishments;
- (iii) Been in existence and operating for at least two years;
- (iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;
- (v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and
- (vi) Evidence that there has been independent financial review of the organization.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(l) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**Severability—Effective date—1995 c 386:** See notes following RCW 67.40.130.

**Effective date—1991 c 336:** "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Effective date—1986 c 104:** "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 April 1, 1986." [1986 c 104 § 2.]

**Severability—1985 c 272:** "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." [1985 c 272 § 2.]

**Contracts for marketing facility and services—Matching nonstate funds:** RCW 67.40.120.

*Special excise tax imposed in King county for state convention and trade center: RCW 67.40.090.*

**67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Credit against state tax—Limits.** (1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.

(2) Notwithstanding subsection (1) of this section:

(a) If a municipality imposed taxes under this chapter and RCW 67.40.100 with a total rate exceeding four percent on January 1, 1998, the rate of tax imposed under this chapter by the municipality shall not exceed the total rate imposed by the municipality under this chapter and RCW 67.40.100 on January 1, 1998.

(b) If a city or town, other than a municipality described in (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the rate of tax imposed under this chapter by the city or town shall not exceed two percent.

(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one million or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.

(3) Except as provided in RCW 67.28.180, any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event.

(4) Tax imposed under this section on a sale of lodging shall be credited against the amount of sales tax due to the state under chapter 82.08 RCW on the same sale of lodging, but the total credit for taxes imposed by all municipalities on a sale of lodging shall not exceed the amount that would be imposed under a two percent tax under this section. This subsection does not apply to taxes which are credited against the state sales tax under RCW 67.28.180. [1997 c 452 § 3.]

**Savings—1997 c 452:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections. As provided in RCW 1.12.020, the sections amended or repealed in this act are continued by section 3 of this act for purposes such as redemption payments on bonds issued in reliance on taxes imposed under those sections. Any moneys held in a fund created under a section repealed in this act shall be deposited in a fund created under section 4 of this act." [1997 c 452 § 23.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation.** All revenue from taxes imposed under this

chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities. Municipalities may, under chapter 39.34 RCW, agree to the utilization of revenue from taxes imposed under this chapter for the purposes of funding a multijurisdictional tourism-related facility. [1997 c 452 § 4.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments.** (1) Before imposing a tax under RCW 67.28.181, a municipality with a population of five thousand or more shall establish a lodging tax advisory committee under this section. A lodging tax advisory committee shall consist of at least five members, appointed by the legislative body of the municipality, unless the municipality has a charter providing for a different appointment authority. The committee membership shall include: (a) At least two members who are representatives of businesses required to collect tax under this chapter; and (b) at least two members who are persons involved in activities authorized to be funded by revenue received under this chapter. Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection. Persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection. Organizations representing businesses required to collect tax under this chapter, organizations involved in activities authorized to be funded by revenue received under this chapter, and local agencies involved in tourism promotion may submit recommendations for membership on the committee. The number of members who are representatives of businesses required to collect tax under this chapter shall equal the number of members who are involved in activities authorized to be funded by revenue received under this chapter. One member shall be an elected official of the municipality who shall serve as chair of the committee. An advisory committee for a county may include one nonvoting member who is an elected official of a city or town in the county. An advisory committee for a city or town may include one nonvoting member who is an elected official of the county in which the city or town is located. The appointing authority shall review the membership of the advisory committee annually and make changes as appropriate.

(2) Any municipality that proposes imposition of a tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall

include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815. Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal. A municipality is not required to submit an amended proposal to an advisory committee under this section. [1997 c 452 § 5.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**67.28.182 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited.** No city imposing the tax authorized under this chapter may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under this chapter to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 13; 1987 1st ex.s. c 8 § 7.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Severability—1987 1st ex.s. c 8:** See note following RCW 67.40.020.

**67.28.185 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.190 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.200 Special excise tax authorized—Exemptions may be established—Collection.** The legislative body of any municipality may establish reasonable exemptions for taxes authorized under this chapter. The department of revenue shall perform the collection of such taxes on behalf of such municipality at no cost to such municipality. [1997 c 452 § 14; 1993 c 389 § 2; 1991 c 331 § 2; 1988 ex.s. c 1 § 23; 1987 c 483 § 3; 1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**67.28.210 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.240 through 67.28.320 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.360 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.370 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development.** (1) Each municipality imposing a tax under chapter 67.28 RCW shall submit a report to the department of community, trade, and economic development on October 1, 1998, and October 1, 2000. Each report shall include the following information:

(a) The rate of tax imposed under chapter 67.28 RCW;

(b) The total revenue received under chapter 67.28 RCW for each of the preceding six years;

(c) A list of projects and activities funded with revenue received under chapter 67.28 RCW; and

(d) The amount of revenue under chapter 67.28 RCW expended for each project and activity.

(2) The department of community, trade, and economic development shall summarize and analyze the data received under subsection (1) of this section in a report submitted to the legislature on January 1, 1999, and January 1, 2001. The report shall include, but not be limited to, analysis of factors contributing to growth in revenue received under chapter 67.28 RCW and the effects of projects and activities funded with revenue received under chapter 67.28 RCW on tourism growth. [1997 c 452 § 6.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

## Chapter 67.38

### CULTURAL ARTS, STADIUM AND CONVENTION DISTRICTS

#### Sections

67.38.140 Contribution of sums for limited purposes.

**67.38.140 Contribution of sums for limited purposes.** The county or counties and each component city included in the district collecting or planning to collect the hotel/motel tax under chapter 67.28 RCW may contribute such revenue in such manner as shall be agreed upon between them, consistent with this chapter and chapter 67.28 RCW. [1997 c 452 § 18; 1982 1st ex.s. c 22 § 14.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080

**Savings—1997 c 452:** See note following RCW 67.28.181.

## Chapter 67.40

### CONVENTION AND TRADE FACILITIES

#### Sections

67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders

67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc.

67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited.

67.40.120 Contracts for marketing facility and services—Matching nonstate funds.

**67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders.** The nondebt-limit proprietary appropriated bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030.

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 the bond retirement and interest requirements. 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 nondebt-limit proprietary appropriated bond retirement account an amount equal to the amount certified by the state finance committee to be due on that payment date. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be paid out of the state convention and trade center account, or state convention and trade center operations account, from the proceeds of the special excise tax imposed under RCW 67.40.090, operating revenues of the state convention and trade center, and bond proceeds and earnings on the investment of bond proceeds, for deposit in the general fund of the state treasury. Any deficiency in such transfer shall be made up as soon as special excise taxes are available for transfer and shall constitute a continuing obligation of the state convention and trade center account until all deficiencies are fully paid.

Bonds issued under RCW 67.40.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1997 c 456 § 25; 1987 1st ex.s. c 8 § 5; 1983 2nd ex.s. c 1 § 5; 1982 c 34 § 6.]

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**Severability—1987 1st ex.s. c 8:** See note following RCW 67.40.020.

**67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc.** Except as provided in chapters 67.28 and 82.14 RCW and RCW 67.28.181, after January 1, 1983, no city, town, or county in which the tax under RCW 67.40.090 is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail as that term is defined in chapter 82.04 RCW [1997 c 452 § 15; 1990 c 242 § 1; 1988 ex.s. c 1 § 25; 1982 c 34 § 10.]

[1997 RCW Supp—page 746]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Application—1990 c 242:** "This 1990 amendment applies to all proceeds of the tax authorized under RCW 67.40.100(2), regardless of when levied or collected." [1990 c 242 § 2.]

**67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited.** No city imposing the tax authorized under chapter 67.28 RCW may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under chapter 67.28 RCW to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 19; 1987 1st ex.s. c 8 § 8.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Severability—1987 1st ex.s. c 8:** See note following RCW 67.40.020.

**67.40.120 Contracts for marketing facility and services—Matching nonstate funds.** The state convention and trade center corporation may contract with the Seattle-King county convention and visitors bureau for marketing the convention and trade center facility and services. Any contract with the Seattle-King county convention and visitors bureau shall include, but is not limited to, the following condition: Each dollar in convention and trade center operations account funds provided to the Seattle-King county convention and visitors bureau shall be matched by at least one dollar and ten cents in nonstate funds. "Nonstate funds" does not include funds received under chapter 67.28 RCW. [1997 c 452 § 20; 1991 c 336 § 2; 1988 ex.s. c 1 § 8.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Effective date—1991 c 336:** See note following RCW 67.28.180.

## Chapter 67.70 STATE LOTTERY

### Sections

- 67.70.042 Scratch games—Baseball stadium construction.
- 67.70.043 New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities.
- 67.70.100 Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability.
- 67.70.240 Use of moneys in state lottery account limited.
- 67.70.241 Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation.

**67.70.042 Scratch games—Baseball stadium construction.** The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional

moneys sufficient to cover the distributions under RCW 67.70.240(4). [1997 c 220 § 207 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 104.]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

*State contribution for baseball stadium limited: RCW 82.14.0486.*

**67.70.043 New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities.** The lottery commission shall conduct new games that are in addition to any games conducted under RCW 67.70.042 and are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(5). No game may be conducted under this section before January 1, 1998. No game may be conducted under this section after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met, and no game is required to be conducted after the distributions cease under RCW 67.70.240(5).

For the purposes of this section, the lottery may accept and market prize promotions provided in conjunction with private-sector marketing efforts. [1997 c 220 § 205 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**67.70.100 Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability.** (1) Except under subsection (2) of this section, no right of any person to a prize drawn is assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled.

(2)(a) The payment of all or part of the remainder of an annuity may be assigned to another person, pursuant to a voluntary assignment of the right to receive future annual prize payments, if the assignment is made pursuant to an appropriate judicial order of the Thurston county superior court or the superior court of the county in which the prize winner resides, if the winner is a resident of Washington state. If the prize winner is not a resident of Washington state, the winner must seek an appropriate order from the Thurston county superior court.

(b) If there is a voluntary assignment under (a) of this subsection, a copy of the petition for an order under (a) of this subsection and all notices of any hearing in the matter shall be served on the attorney general no later than ten days before any hearing or entry of any order.

(c) The court receiving the petition may issue an order approving the assignment and directing the director to pay to the assignee the remainder or portion of an annuity so assigned upon finding that all of the following conditions have been met:

(i) The assignment has been memorialized in writing and executed by the assignor and is subject to Washington law;

(ii) The assignor provides a sworn declaration to the court attesting to the facts that the assignor has had the opportunity to be represented by independent legal counsel in connection with the assignment, has received independent financial and tax advice concerning the effects of the assignment, and is of sound mind and not acting under duress, and the court makes findings determining so;

(iii) The assignee has provided a one-page written disclosure statement that sets forth in bold-face type, fourteen point or larger, the payments being assigned by amount and payment dates, the purchase price, or loan amount being paid; the interest rate or rate of discount to present value, assuming monthly compounding and funding on the contract date; and the amount, if any, of any origination or closing fees that will be charged to the lottery winner. The disclosure statement must also advise the winner that the winner should consult with and rely upon the advice of his or her own independent legal or financial advisors regarding the potential federal and state tax consequences of the transaction; and

(iv) The proposed assignment does not and will not include or cover payments or portions of payments subject to offsets pursuant to RCW 67.70.255 unless appropriate provision is made in the order to satisfy the obligations giving rise to the offset.

(d) The commission may intervene as of right in any proceeding under this section but shall not be deemed an indispensable or necessary party.

(3) The director will not pay the assignee an amount in excess of the annual payment entitled to the assignor.

(4) The commission may adopt rules pertaining to the assignment of prizes under this section, including recovery of actual costs incurred by the commission. The recovery of actual costs shall be deducted from the initial annuity payment made to the assignee.

(5) No voluntary assignment under this section is effective unless and until the national office of the federal internal revenue service provides a ruling that declares that the voluntary assignment of prizes will not affect the federal income tax treatment of prize winners who do not assign their prizes. If at any time the federal internal revenue service or a court of competent jurisdiction provides a determination letter, revenue ruling, other public ruling of the internal revenue service or published decision to any state lottery or state lottery prize winner declaring that the voluntary assignment of prizes will effect the federal income tax treatment of prize winners who do not assign their prizes, the director shall immediately file a copy of that letter, ruling, or published decision with the secretary of state. No further voluntary assignments may be allowed after the date the ruling, letter, or published decision is filed.

(6) The occurrence of any event described in subsection (5) of this section does not render invalid or ineffective



assignments validly made and approved pursuant to an appropriate judicial order before the occurrence of any such event.

(7) The requirement for a disclosure statement in subsection (2)(c)(iii) of this section does not apply to any assignment agreement executed before April 21, 1997.

(8) The commission and the director shall be discharged of all further liability upon payment of a prize pursuant to this section. [1997 c 111 § 1; 1996 c 228 § 2; 1982 2nd ex.s. c 7 § 10.]

**Effective date—1997 c 111:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 111 § 2.]

**Intent—1996 c 228:** "The Washington state lottery act under chapter 7, Laws of 1982 2nd ex. sess., provides, among other things, that the right of any person to a prize shall not be assignable, except to the estate of a deceased prize winner, or to a person designated pursuant to an appropriate judicial order. Current law and practices provide that those who win lotto jackpots are paid in annual installments over a period of twenty years. The legislature recognizes that some prize winners, particularly elderly persons, those seeking to acquire a small business, and others with unique needs, may not want to wait to be paid over the course of up to twenty years. It is the intent of the legislature to provide a restrictive means to accommodate those prize winners who wish to enjoy more of their winnings currently, without impacting the current fiscal structure of the Washington state lottery commission." [1996 c 228 § 1.]

**67.70.240 Use of moneys in state lottery account limited.** The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the state's general fund;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Effective date—Severability—1987 c 513:** See notes following RCW 18.85.310.

*State contribution for baseball stadium limited: RCW 82.14.0486.*

**67.70.241 Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation.** The person or entity responsible for operating a stadium and exhibition center as defined in RCW 36.102.010 shall promote the lottery with any combination of in-kind advertising, sponsorship, or prize promotions, valued at one million dollars annually beginning January 1998 and increased by four percent each year thereafter for the purpose of increasing lottery sales of games authorized under RCW 67.70.043. The content and value of the advertising sponsorship or prize promotions are subject to reasonable approval in advance by the lottery commission. The obligation of this section shall cease when the distributions under RCW 67.70.240(5) end, but not later than December 31, 2020. [1997 c 220 § 208 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

## Title 69

### FOOD, DRUGS, COSMETICS, AND POISONS

#### Chapters

**69.50 Uniform controlled substances act.**

#### Chapter 69.50

#### UNIFORM CONTROLLED SUBSTANCES ACT

##### Sections

|           |   |
|-----------|---|
| 69.50.401 | Prohibited acts: A—Penalties.   |
| 69.50.435 | Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions. |
| 69.50.440 | Possession with intent to manufacture—Penalty.  |
| 69.50.520 | Violence reduction and drug enforcement account.  |

**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 (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(iii) 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;

(iv) 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;

(v) 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) a counterfeit substance which is methamphetamine, 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;

(iii) 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;

(iv) 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;

(v) 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 or her 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)(iii) of this section any person found guilty of possession of forty grams or less of marijuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

**Application—1989 c 271 §§ 101 through 111:** See note following RCW 9.94A.310.

**Severability—1989 c 271:** See note following RCW 9.94A.310.

**Severability—1987 c 458:** See note following RCW 48.21.160.

*Serious drug offenders, notice of release or escape:* RCW 9.94A.154.

**69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions.** (a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

(1) In a school;

(2) On a school bus;

(3) Within one thousand feet of a school bus route stop designated by the school district;

(4) Within one thousand feet of the perimeter of the school grounds;

(5) In a public park;

(6) In a public housing project designated by a local governing authority as a drug-free zone;

(7) On a public transit vehicle;

(8) In a public transit stop shelter;

(9) At a civic center designated as a drug-free zone by the local governing authority; or

(10) Within one thousand feet of the perimeter of a facility designated under (9) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(9) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (a)(9) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense

with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(3) "School bus route stop" means a school bus stop as designated by a school district;

(4) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(5) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(6) "Transit authority" means a city, county, or state transportation system, transportation authority, public

transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(7) "Stop shelter" means a passenger shelter designated by a transit authority;

(8) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

(9) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020. [1997 c 30 § 2; 1997 c 23 § 1; 1996 c 14 § 2; 1991 c 32 § 4. Prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

**Reviser's note:** This section was amended by 1997 c 23 § 1 and by 1997 c 30 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—1997 c 30:** "The legislature finds that a large number of illegal drug transactions occur in or near public housing projects. The legislature also finds that this activity places the families and children residing in these housing projects at risk for drug-related crimes and increases the general level of fear among the residents of the housing project and the areas surrounding these projects. The intent of the legislature is to allow local governments to designate public housing projects as drug-free zones." [1997 c 30 § 1.]

**Findings—Intent—1996 c 14:** "The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones." [1996 c 14 § 1.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1989 c 271:** See note following RCW 9.94A.310.

**69.50.440 Possession with intent to manufacture—Penalty.** It is unlawful for any person to possess ephedrine or pseudoephedrine with intent to manufacture methamphetamine. Any person who violates this section is guilty of a crime and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost. [1997 c 71 § 3; 1996 c 205 § 1.]

**69.50.520 Violence reduction and drug enforcement account.** The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2), 69.50.505(h)(1), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. Funds from the account may also be appropriated to reimburse local governments for

costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 1997-1999 biennium, funds from the account may also be used for costs associated with conducting a feasibility study of the department of corrections' offender-based tracking system. After July 1, 1999, at least seven and one-half percent of expenditures from the account shall be used for providing grants to community networks under chapter 70.190 RCW by the family policy council. [1997 c 451 § 2; 1997 c 338 § 69; 1997 c 149 § 912; 1995 2nd sp.s. c 18 § 919; 1994 sp.s. c 7 § 910; 1989 c 271 § 401.]

**Reviser's note:** This section was amended by 1997 c 338 § 69 and by 1997 c 451 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 451:** See note following RCW 66.24.290.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Appropriation—Standards—1990 c 275 § 4; 1989 c 271 § 401:** "The sum of one million eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the office of the administrator for the courts for the treatment alternatives to street crime program. These funds shall be used for providing services in domestic cases to children and to parents or others having custody of children under chapter 26.09, 26.10, 26.26, 26.44, or 26.50 RCW. These funds shall not be available for expenditure until January 1, 1990. The office of the administrator for the courts shall establish standards for the courts to recover the expenses of the program specified in this section from the participants, based upon the individual participant's ability to pay. All fees collected shall be remitted to the state treasurer for deposit in the drug enforcement and education account under RCW 69.50.520." [1990 c 275 § 4; 1989 c 271 § 420.]

**Captions not law—1989 c 271:** "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

**Severability—1989 c 271:** See note following RCW 9.94A.310.

## Title 70

### PUBLIC HEALTH AND SAFETY

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- 70.129 Long-term care resident rights.
- 70.146 Water pollution control facilities financing.
- 70.149 Heating oil pollution liability protection act.
- 70.168 State-wide trauma care system.
- 70.200 Donations for children.

### Chapter 70.05

#### LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

##### Sections

- 70.05.074 On-site sewage system permits—Application—Limitation of  
alternative sewage systems.
- 70.05.125 County public health account—Distribution to local public  
health jurisdictions.

##### **70.05.074 On-site sewage system permits— Application—Limitation of alternative sewage systems.**

(1) The local health officer must respond to the applicant for an on-site sewage system permit within thirty days after receiving a fully completed application. The local health officer must respond that the application is either approved, denied, or pending.

(2) If the local health officer denies an application to install an on-site sewage system, the denial must be for cause and based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. The local health officer must provide the applicant with a written justification for the denial, along with an explanation of the procedure for appeal.

(3) If the local health officer identifies the application as pending and subject to review beyond thirty days, the local health officer must provide the applicant with a written justification that the site-specific conditions or circumstances necessitate a longer time period for a decision on the application. The local health officer must include any specific information necessary to make a decision and the estimated time required for a decision to be made.

(4) A local health officer may not limit the number of alternative sewage systems within his or her jurisdiction without cause. Any such limitation must be based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. If such a limitation is established, the local health officer must justify the limitation in writing, with specific reasons, and must provide an explanation of the procedure for appealing the limitation. [1997 c 447 § 2.]

**Finding—Purpose—1997 c 447:** "The legislature finds that improperly designed, installed, or maintained on-site sewage disposal systems are a major contributor to water pollution in this state. The legislature also recognizes that evolving technology has produced many viable alternatives to traditional on-site septic systems. It is the purpose of this act to help facilitate the siting of new alternative on-site septic systems and to assist local governments in promoting efficient operation of on-site septic \*these systems." [1997 c 447 § 1.]

**\*Reviser's note:** Due to a drafting error, the word "these" was not removed when this sentence was rewritten.

**Construction—1997 c 447 §§ 2-4:** "Nothing in sections 2 through 4 of this act may be deemed to eliminate any requirements for approval from public health agencies under applicable law in connection with the siting, design, construction, and repair of on-site septic systems." [1997 c 447 § 6.]

**70.05.125 County public health account—  
Distribution to local public health jurisdictions.** (1) The county public health account is created in the state treasury. Funds deposited in the county public health account shall be distributed by the state treasurer to each local public health jurisdiction based upon amounts certified to it by the department of community, trade, and economic development in consultation with the Washington state association of counties. The account shall include funds distributed under RCW 82.44.110 and 82.14.200(8) and such funds as are appropriated to the account from the health services account under RCW 43.72.900, the public health services account under RCW 43.72.902, and such other funds as the legislature may appropriate to it.

(2)(a) The director of the department of community, trade, and economic development shall certify the amounts to be distributed to each local public health jurisdiction using 1995 as the base year of actual city contributions to local public health.

(b) Only if funds are available and in an amount no greater than available funds under RCW 82.14.200(8), the department of community, trade, and economic development shall adjust the amount certified under (a) of this subsection to compensate for any city that became newly incorporated as a result of an election during calendar year 1994 or 1995. The amount to be adjusted shall be equal to the amount which otherwise would have been lost to the health jurisdic-

tion due to the incorporation as calculated using the jurisdiction's 1995 funding formula.

(c) The county treasurer shall certify the actual 1995 city contribution to the department. Funds in excess of the base shall be distributed proportionately among the health jurisdictions based on incorporated population figures as last determined by the office of financial management.

(3) Moneys distributed under this section shall be expended exclusively for local public health purposes. [1997 c 333 § 1; 1995 1st sp.s. c 15 § 1.]

**Effective date—1997 c 333:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 333 § 3.]

**Effective date—1995 1st sp.s. c 15:** "This act shall take effect January 1, 1996." [1995 1st sp.s. c 15 § 3.]

### Chapter 70.24

## CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

(Formerly: Control and treatment of venereal diseases)

#### Sections

- 70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information.
- 70.24.107 Rule-making authority—1997 c 345.
- 70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders.

**70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information.** (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States

public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) \*Local law enforcement agencies to the extent provided in RCW 70.24.034;

(h) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(i) A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(j) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(k) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-

planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or

70.24.370, shall be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure shall also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member shall also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition may not be disclosed to a staff person except as provided in subsection (2)(i) of this section and RCW 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under subsection (2)(i) of this section and RCW 70.24.340(4).

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing. [1997 c 345 § 2; 1997 c 196 § 6; 1994 c 72 § 1; 1989 c 123 § 1; 1988 c 206 § 904.]

**Reviser's note:** \*(1) The governor vetoed 1997 c 196 § 5, the amendment directing disclosure to local law enforcement agencies.

(2) This section was amended by 1997 c 196 § 6 and by 1997 c 345 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—1997 c 345:** "(1) The legislature finds that department of corrections staff and jail staff perform essential public functions that are vital to our communities. The health and safety of these



workers is often placed in jeopardy while they perform the responsibilities of their jobs. Therefore, the legislature intends that the results of any HIV tests conducted on an offender or detainee pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be disclosed to the health care administrator or infection control coordinator of the department of corrections facility or the local jail that houses the offender or detainee. The legislature intends that these test results also be disclosed to any corrections or jail staff who have been substantially exposed to the bodily fluids of the offender or detainee when the disclosure is provided by a licensed health care provider in accordance with Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens.

(2) The legislature further finds that, through the efforts of health care professionals and corrections staff, offenders in department of corrections facilities and people detained in local jails are being encouraged to take responsibility for their health by requesting voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling. The legislature does not intend, through chapter 345, Laws of 1997, to mandate disclosure of the results of voluntary and anonymous tests. The legislature intends to continue to protect the confidential exchange of medical information related to voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling as provided by chapter 70.24 RCW." [1997 c 345 § 1.]

**70.24.107 Rule-making authority—1997 c 345.** The department of health and the department of corrections shall each adopt rules to implement chapter 345, Laws of 1997. The department of health and the department of corrections shall also report to the legislature by January 1, 1998, on the following: (1) Changes made in rules and department of corrections and local jail policies and procedures to implement chapter 345, Laws of 1997; and (2) a summary of the number of times and the circumstances under which individual corrections staff and jail staff members were informed that a particular offender or detainee had a sexually transmitted disease or other communicable disease. The department of health and the department of corrections shall cooperate with local jail administrators to obtain the information from local jail administrators that is necessary to comply with this section. [1997 c 345 § 6.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

**70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders.** (1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or other categories of employment determined by the board in rule to be at risk

of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. If the state or local public health officer refuses to order counseling and testing under this subsection, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the public health officer shall be required to issue the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The person who is subject to the state or local public health officer's order to receive counseling and testing shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule or if he or she is ordered to do so by a court.

The counseling and testing required under this subsection shall be completed as soon as possible after the substantial exposure or after an order is issued by a court, but shall begin not later than seventy-two hours after the substantial exposure or an order is issued by the court. [1997 c 345 § 3; 1988 c 206 § 703.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

## Chapter 70.38

### HEALTH PLANNING AND DEVELOPMENT

#### Sections

70.38.025 Definitions.

70.38.111 Certificates of need—Exemptions.

**70.38.025 Definitions.** When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home 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. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

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

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(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 federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "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.

(11) "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 established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "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. [1997 c 210 § 2; 1991 c 158 § 1; 1989 1st ex.s. c 9 § 602; 1988 c 20 § 1; 1983 1st ex.s. c 41 § 43; 1983 c 235 § 2; 1982 c 119 § 1; 1980 c 139 § 2; 1979 ex.s. c 161 § 2.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**70.38.111 Certificates of need—Exemptions.** (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed

application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section.

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any

portion thereof, shall comply with the same life and safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

(i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and

(ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety days prior to the effective date of license modification reflecting the restored beds. Prior to any license modification to convert beds back to nursing home beds under this section, the licensee must demonstrate that the nursing home meets the certificate of need exemption requirements of this section.

The term "construction," as used in (b)(ii) of this subsection, is limited to those projects that are expected to equal or exceed the expenditure minimum amount, as determined under this chapter.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction. [1997 c 210 § 1; 1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**Section captions—Conflict with federal requirements—Severability—Effective date—1993 c 508:** See RCW 74.39A.900 through 74.39A.903.

## Chapter 70.44 PUBLIC HOSPITAL DISTRICTS

### Sections

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**70.44.007 Definitions.** As used in this chapter, the following words have the meanings indicated:

(1) "Other health care facilities" means nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(2) "Other health care services" means nursing home, extended care, long-term care, outpatient, rehabilitative, health maintenance, and ambulance services and such other services as are appropriate to the health needs of the population served.

(3) "Public hospital district" or "district" means public health care service district. [1997 c 332 § 15; 1982 c 84 § 12; 1974 ex.s. c 165 § 5.]

**Severability—1997 c 332:** See RCW 70.45.900.

**70.44.040 Elections—Commissioners, terms, districts.** (1) The provisions of Title 29 RCW relating to elections shall govern public hospital districts, except as provided in this chapter.

A public hospital district shall be created when the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters of the proposed district voting on the proposition and the total vote cast upon the proposition exceeds forty percent of the total number of votes cast in the proposed district at the preceding state general election.

A public hospital district initially may be created with three, five, or seven commissioner districts. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three, five, or seven commissioners shall be elected from either three, five, or seven commissioner districts, or at-large positions, or both, as determined by resolution of the county commissioners of the county or counties in which the proposed public hospital district is located, all in accordance with RCW 70.44.054. The election of the initial commissioners shall be null and void if the district is not authorized to be created.

No primary shall be held. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for the commissioner of each commissioner district or at-large position shall be elected as the commissioner of that district. The terms of office of the initial public hospital district commissioners shall be staggered, with the length of the terms assigned so that the person or persons who are elected

receiving the greater number of votes being assigned a longer term or terms of office and each term of an initial commissioner running until a successor assumes office who is elected at one of the next three following district general elections the first of which occurs at least one hundred twenty days after the date of the election where voters approved the ballot proposition creating the district, as follows:

(a) If the public hospital district will have three commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successor to one initial commissioner shall be elected at the second following district general election, and the successor to one initial commissioner shall be elected at the third following district general election;

(b) If the public hospital district will have five commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to two initial commissioners shall be elected at the third following district general election;

(c) If the public hospital district will have seven commissioners, the successors to two initial commissioners shall be elected at such first following district general election, the successors to \*three [two] initial commissioners shall be elected at the second following district general election, and the successors to three initial commissioners shall be elected at the third following district general election.

The initial commissioners shall take office immediately when they are elected and qualified. The term of office of each successor shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with RCW 29.04.170.

(2) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Voters of the entire public hospital district may vote at a primary or general election to elect a person as a commissioner of the commissioner district.

If the proposed public hospital district initially will have three commissioner districts and the public hospital district is county-wide, and if the county has three county legislative authority districts, the county legislative authority districts shall be used as public hospital district commissioner districts. In all other instances the county auditor of the county in which all or the largest portion of the proposed public hospital district is located shall draw the initial public hospital district commissioner districts and designate at-large positions, if appropriate, as provided in RCW 70.44.054. Each of the commissioner positions shall be numbered consecutively and associated with the commissioner district or at-large position of the same number.

The commissioners of a public hospital district that is not coterminous with the boundaries of a county that has three county legislative authority districts shall at the times required in chapter 29.70 RCW and may from time to time redraw commissioner district boundaries in a manner consistent with chapter 29.70 RCW. [1997 c 99 § 1; 1994 c 223 § 78; 1990 c 259 § 39; 1979 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.]

**\*Reviser's note:** The number of commissioners to be elected at the second following district general election appears to have been erroneously changed from three to two in the substitute bill.

**Effective date—1997 c 99:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 99 § 8.]

**Purpose—1979 ex.s. c 126:** See RCW 29.04.170(1).

**70.44.041 Validity of appointment or election of commissioners—Compliance with 1994 c 223.** No appointment to fill a vacant position on or election to the board of commissioners of any public hospital district made after June 9, 1994, and before April 21, 1997, is deemed to be invalid solely due to the public hospital district's failure to redraw its commissioner district boundaries if necessary to comply with chapter 223, Laws of 1994. [1997 c 99 § 7.]

**Effective date—1997 c 99:** See note following RCW 70.44.040.

**70.44.042 Commissioner districts—Resolution to abolish—Proposition to reestablish.** 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.

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 voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition to reestablish commissioner districts. [1997 c 99 § 2; 1967 c 227 § 2.]

**Effective date—1997 c 99:** See note following RCW 70.44.040.

**70.44.047 Redrawn boundaries—Assignment of commissioners to districts.** If, as the result of redrawing the boundaries of commissioner districts as permitted or required under the provisions of this chapter, chapter 29.70 RCW, or any other statute, more than the correct number of commissioners who are associated with commissioner districts reside in the same commissioner district, a commissioner or commissioners residing in that redrawn commissioner district equal in number to the number of commissioners in excess of the correct number shall be assigned to the drawn commissioner district or districts in which less than the correct number of commissioners associated with commissioner districts reside. The commissioner or commissioners who are so assigned shall be those with the shortest unexpired term or terms of office, but if the number of such commissioners with the same terms of office exceeds the number that are to be assigned, the board of commissioners shall select by lot from those commissioners which one or ones are assigned. A commissioner who is so assigned shall be deemed to be a resident of the commissioner district to which he or she is assigned for purposes of determining whether a position is vacant. [1997 c 99 § 6.]

**Effective date—1997 c 99:** See note following RCW 70.44.040.

**70.44.053 Increase in number of commissioners—Proposition 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 voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to either five or seven members. The petition or resolution shall specify whether it is proposed to increase the number of commissioners to either five or seven members. [1997 c 99 § 3; 1994 c 223 § 80; 1967 c 77 § 2.]

**Effective date—1997 c 99:** See note following RCW 70.44.040.

**70.44.054 Increase in number of commissioners—Commissioner districts.** If the voters of the district approve the ballot proposition authorizing the increase in the number of commissioners to either five or seven members, the additional commissioners shall be elected at large from the entire district; provided that, the board of commissioners of the district may by resolution redistrict the public hospital district into five commissioner districts if the district has five commissioners or seven commissioner districts if the district has seven commissioners. The board of commissioners shall draw the boundaries of each commissioner district to include as nearly as possible equal portions of the total population of the public hospital district.

If the board of commissioners increases the number of commissioner districts as provided in this section, one commissioner shall be elected from each commissioner district, and no commissioner may be elected from a commissioner district in which another commissioner resides. [1997 c 99 § 4.]

**Effective date—1997 c 99:** See note following RCW 70.44.040.

**70.44.056 Increase in number of commissioners—Appointments—Election—Terms.** In all existing public hospital districts in which an increase in the number of district commissioners is proposed, the additional commissioner positions shall be deemed to be vacant and the board of commissioners of the public hospital district shall appoint qualified persons to fill those vacancies in accordance with RCW 42.12.070.

Each person who is appointed shall serve until a qualified person is elected at the next general election of the district occurring one hundred twenty days or more after the date of the election at which the voters of the district approved the ballot proposition authorizing the increase in the number of commissioners. If needed, special filing periods shall be authorized as provided in RCW 29.15.170 and 29.15.180 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, no primary shall be held and the candidate receiving the greatest number of votes for each position shall be elected. Except for the initial terms of office, persons elected to each of these additional commissioner positions shall be elected to a six-year term. The newly elected commissioners shall assume office as provided in RCW 29.04.170.

The initial terms of the new commissioners shall be staggered as follows: (1) When the number of commissioners is increased from three to five, the person elected receiving the greatest number of votes shall be elected to a six-year term of office, and the other person shall be elected to a four-year term; (2) when the number of commissioners is increased from three or five to seven, the terms of the new commissioners shall be staggered over the next three district general elections so that two commissioners will be elected at the first district general election following the election where the additional commissioners are elected, two commissioners will be at the second district general election after the election of the additional commissioners, and three commissioners will be elected at the third district general election following the election of the additional commissioners, with the persons elected receiving the greatest number of votes elected to serve the longest terms. [1997 c 99 § 5.]

Effective date—1997 c 99: See note following RCW 70.44.040.

**70.44.060 Powers and duties.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) 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.

(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) of this section.

(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 and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations 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, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; 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. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-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. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes 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 authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. 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 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.

(8) 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.

(9) 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.

(10) 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. [1997 c 3 § 206; 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 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.]

**Intent—1997 c 3 § 201-207:** See note following RCW 84.55.010.

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1979 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 ex.s. c 155 § 3.]

**Severability—1979 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 39.52.020.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Eminent domain*

*by cities:* Chapter 8.12 RCW.

*generally:* State Constitution Art. 1 § 16.

*Limitation on levies:* State Constitution Art. 7 § 2; 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.

**70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to 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, any other legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including the providing of health maintenance services. If a public hospital district chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through the establishment of a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital district and the other party or parties participate. The governing body of such legal entity shall include representatives of the public hospital district, including members of the public hospital district's board of commissioners. A public hospital district contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [1997 c 332 § 16; 1982 c 84 § 19; 1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

**Severability—1997 c 332:** See RCW 70.45.900.

**70.44.300 Sale of surplus real property.** (1) The board of commissioners of any public hospital district may sell and convey at public or private sale real property of the district if the board determines by resolution that the property is no longer required for public hospital district purposes or determines by resolution that the sale of the property will further the purposes of the public hospital district.

(2) Any sale of district real property authorized pursuant to this section shall be preceded, not more than one year prior to the date of sale, by market value appraisals by three licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020 or three

independent experts in valuing health care property, selected by the board of commissioners, and no sale shall take place if the sale price would be less than ninety percent of the average of such appraisals.

(3) When the board of commissioners of any public hospital district proposes a sale of district real property pursuant to this section and the value of the property exceeds one hundred thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper of general circulation within the public hospital district. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the public hospital district property at the place and the day and hour fixed in the notice and consider evidence offered for and against the propriety and advisability of the proposed sale.

(4) If in the judgment of the board of commissioners of any district the sale of any district real property not needed for public hospital district purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded. The fee or commissions charged for any broker service shall not exceed seven percent of the resulting sale price for a single parcel. No licensed real estate broker or professionally designated real estate appraisers as defined in RCW 74.46.020 or independent expert in valuing health care property selected by the board to appraise the market value of a parcel of property to be sold may be a party to any contract with the public hospital district to sell such property for a period of three years after the appraisal. [1997 c 332 § 17; 1984 c 103 § 4; 1982 c 84 § 2.]

Severability—1997 c 332: Sec RCW 70.45.900.

**70.44.315 Evaluation criteria and requirements for acquisition of district hospitals.** (1) When evaluating a potential acquisition, the commissioners shall determine their compliance with the following requirements:

(a) That the acquisition is authorized under chapter 70.44 RCW and other laws governing public hospital districts;

(b) That the procedures used in the decision-making process allowed district officials to thoroughly fulfill their due diligence responsibilities as municipal officers, including those covered under chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW prohibiting malfeasance of public officials;

(c) That the acquisition will not result in the revocation of hospital privileges;

(d) That sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(e) That the acquisition is allowed under Article VIII, section 7 of the state Constitution, which prohibits gifts of public funds or lending of credit and Article XI, section 14, prohibiting private use of public funds;

(f) That the public hospital district will retain control over district functions as required under chapter 70.44 RCW and other laws governing hospital districts;

(g) That the activities related to the acquisition process complied with chapters 42.17 and 42.32 RCW, governing disclosure of public records, and chapter 42.30 RCW, governing public meetings;

(h) That the acquisition complies with the requirements of RCW 70.44.300 relating to fair market value; and

(i) Other state laws affecting the proposed acquisition.

(2) The commissioners shall also determine whether the public hospital district should retain a right of first refusal to repurchase the assets by the public hospital district if the hospital is subsequently sold to, acquired by, or merged with another entity.

(3)(a) Prior to approving the acquisition of a district hospital, the board of commissioners of the hospital district shall obtain a written opinion from a qualified independent expert or the Washington state department of health as to whether or not the acquisition meets the standards set forth in RCW 70.45.080.

(b) Upon request, the hospital district and the person seeking to acquire its hospital shall provide the department or independent expert with any needed information and documents. The department shall charge the hospital district for any costs the department incurs in preparing an opinion under this section. The hospital district may recover from the acquiring person any costs it incurs in obtaining the opinion from either the department or the independent expert. The opinion shall be delivered to the board of commissioners no later than ninety days after it is requested.

(c) Within ten working days after it receives the opinion, the board of commissioners shall publish notice of the opinion in at least one newspaper of general circulation within the hospital district, stating how a person may obtain a copy, and giving the time and location of the hearing required under (d) of this subsection. It shall make a copy of the report and the opinion available to anyone upon request.

(d) Within thirty days after it received the opinion, the board of commissioners shall hold a public hearing regarding the proposed acquisition. The board of commissioners may vote to approve the acquisition no sooner than thirty days following the public hearing.

(4)(a) For purposes of this section, "acquisition" means an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090. Acquisition does not include an acquisition where the other party or parties to the acquisition are nonprofit corporations having a substantially similar charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include an acquisition where the other party is an organization that is a limited liability corporation, a partnership, or any other legal entity and the members, partners, or otherwise designated controlling parties of the organization are all nonprofit corporations having a charitable health care purpose, organi-

zations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include activities between two or more governmental organizations, including organizations acting pursuant to chapter 39.34 RCW, regardless of the type of organizational structure used by the governmental entities.

(b) For purposes of this subsection (4), "person" means an individual, a trust or estate, a partnership, a corporation including associations, a limited liability company, a joint stock company, or an insurance company. [1997 c 332 § 18.]

**Severability—1997 c 332:** See RCW 70.45.900.

## Chapter 70.45

### ACQUISITION OF NONPROFIT HOSPITALS

#### Sections

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**70.45.010 Legislative findings.** The health of the people of our state is a most important public concern. The state has an interest in assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. The state also has a responsibility to protect the public interest in nonprofit hospitals and to clarify the responsibilities of local public hospital district boards with respect to public hospital district assets by making certain that the charitable and public assets of those hospitals are managed prudently and safeguarded consistent with their mission under the laws governing nonprofit and municipal corporations. [1997 c 332 § 1.]

**70.45.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of health.

(2) "Hospital" means any entity that is: (a) Defined as a hospital in RCW 70.41.020 and is required to obtain a license under RCW 70.41.090; or (b) a psychiatric hospital required to obtain a license under chapter 71.12 RCW.

(3) "Acquisition" means an acquisition by a person of an interest in a nonprofit hospital, whether by purchase, merger, lease, gift, joint venture, or otherwise, that results in

a change of ownership or control of twenty percent or more of the assets of the hospital, or that results in the acquiring person holding or controlling fifty percent or more of the assets of the hospital, but acquisition does not include an acquisition if the acquiring person: (a) Is a nonprofit corporation having a substantially similar charitable health care purpose as the nonprofit corporation from whom the hospital is being acquired, or is a government entity; (b) is exempt from federal income tax under section 501(c)(3) of the internal revenue code or as a government entity; and (c) will maintain representation from the affected community on the local board of the hospital.

(4) "Nonprofit hospital" means a hospital owned by a nonprofit corporation organized under Title 24 RCW.

(5) "Person" means an individual, a trust or estate, a partnership, a corporation including associations, limited liability companies, joint stock companies, and insurance companies. [1997 c 332 § 2.]

**70.45.030 Department approval required—Application—Fees.** (1) A person may not engage in the acquisition of a nonprofit hospital without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department on forms provided by the department, and at a minimum must include: The name of the hospital being acquired, the name of the acquiring person or other parties to the acquisition, the acquisition price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria in RCW 70.45.070, and all other related documents. The applications and all related documents are considered public records for purposes of chapter 42.17 RCW.

(3) The department shall charge an applicant fees sufficient to cover the costs of implementing this chapter. The fees must include the cost of the attorney general's opinion under RCW 70.45.060. The department shall transfer this portion of the fee, upon receipt, to the attorney general. [1997 c 332 § 3.]

**70.45.040 Applications—Deficiencies—Public notice.** (1) The department, in consultation with the attorney general, shall determine if the application is complete for the purposes of review. The department may find that an application is incomplete if a question on the application form has not been answered in whole or in part, or has been answered in a manner that does not fairly meet the question addressed, or if the application does not include attachments of supporting documents as required by RCW 70.45.030. If the department determines that an application is incomplete, it shall notify the applicant within fifteen working days after the date the application was received stating the reasons for its determination of incompleteness, with reference to the particular questions for which a deficiency is noted.

(2) Within five working days after receipt of a completed application, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first class United States mail, electronic mail, or

facsimile transmission, any person who has requested notice of the filing of such applications. The notice must state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department. [1997 c 332 § 4.]

**70.45.050 Public hearings.** During the course of review under this chapter, the department shall conduct one or more public hearings, at least one of which must be in the county where the hospital to be acquired is located. At the hearings, anyone may file written comments and exhibits or appear and make a statement. The department may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

A hearing must be held not later than forty-five days after receipt of a completed application. At least ten days' public notice must be given before the holding of a hearing. [1997 c 332 § 5.]

**70.45.060 Attorney general review and opinion—Department review and decision—Adjudicative proceedings.** (1) The department shall provide the attorney general with a copy of a completed application upon receiving it. The attorney general shall review the completed application, and within forty-five days of the first public hearing held under RCW 70.45.050 shall provide a written opinion to the department as to whether or not the acquisition meets the requirements for approval in RCW 70.45.070.

(2) The department shall review the completed application to determine whether or not the acquisition meets the requirements for approval in RCW 70.45.070 and 70.45.080. Within thirty days after receiving the written opinion of the attorney general under subsection (1) of this section, the department shall:

(a) Approve the acquisition, with or without any specific modifications or conditions; or

(b) Disapprove the acquisition.

(3) The department may not make its decision subject to any condition not directly related to requirements in RCW 70.45.070 or 70.45.080, and any condition or modification must bear a direct and rational relationship to the application under review.

(4) A person engaged in an acquisition and affected by a final decision of the department has the right to an adjudicative proceeding under chapter 34.05 RCW. The opinion of the attorney general provided under subsection (1) of this section may not constitute a final decision for purposes of review.

(5) The department or the attorney general may extend, by not more than thirty days, any deadline established under this chapter one time during consideration of any application, for good cause. [1997 c 332 § 6.]

**70.45.070 Department review—Criteria to safeguard charitable assets.** The department shall only approve an application if the parties to the acquisition have taken the proper steps to safeguard the value of charitable assets and

ensure that any proceeds from the acquisition are used for appropriate charitable health purposes. To this end, the department may not approve an application unless, at a minimum, it determines that:

(1) The acquisition is permitted under chapter 24.03 RCW, the Washington nonprofit corporation act, and other laws governing nonprofit entities, trusts, or charities;

(2) The nonprofit corporation that owns the hospital being acquired has exercised due diligence in authorizing the acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition;

(3) The procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives, and that they used appropriate expert assistance;

(4) No conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition;

(5) The nonprofit corporation will receive fair market value for its assets. The attorney general or the department may employ, at the expense of the acquiring person, reasonably necessary expert assistance in making this determination. This expense must be in addition to the fees charged under RCW 70.45.030;

(6) Charitable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation;

(7) Any management contract under the acquisition will be for fair market value;

(8) The proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community;

(9) Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity; and

(10) A right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the hospital is subsequently sold to, acquired by, or merged with another entity. [1997 c 332 § 7.]

**70.45.080 Department review—Criteria for continued existence of accessible, affordable health care.** The department shall only approve an application if the acquisition in question will not detrimentally affect the continued existence of accessible, affordable health care that is responsive to the needs of the community in which the hospital to be acquired is located. To this end, the department shall not approve an application unless, at a minimum, it determines that:

(1) Sufficient safeguards are included to assure the affected community continued access to affordable care, and that alternative sources of care are available in the community should the acquisition result in a reduction or elimination of particular health services;

(2) The acquisition will not result in the revocation of hospital privileges;

(3) Sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(4) The acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits to promote improved health in the affected community. Activities and funding provided under RCW 70.45.070(8) may be considered in evaluating compliance with this commitment; and

(5) Sufficient safeguards are included to avoid conflict of interest in patient referral. [1997 c 332 § 8.]

**70.45.090 Approval of acquisition required—Injunctions.** (1) The secretary of state may not accept any forms or documents in connection with any acquisition of a nonprofit hospital until the acquisition has been approved by the department under this chapter.

(2) The attorney general may seek an injunction to prevent any acquisition not approved by the department under this chapter. [1997 c 332 § 9.]

**70.45.100 Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action.** The department shall require periodic reports from the nonprofit corporation or its successor nonprofit corporation or foundation and from the acquiring person or other parties to the acquisition to ensure compliance with commitments made. The department may subpoena information and documents and may conduct on-site compliance audits at the acquiring person's expense.

If the department receives information indicating that the acquiring person is not fulfilling commitments to the affected community under RCW 70.45.080, the department shall hold a hearing upon ten days' notice to the affected parties. If after the hearing the department determines that the information is true, it may revoke or suspend the hospital license issued to the acquiring person pursuant to the procedure established under RCW 70.41.130, refer the matter to the attorney general for appropriate action, or both. The attorney general may seek a court order compelling the acquiring person to fulfill its commitments under RCW 70.45.080. [1997 c 332 § 10.]

**70.45.110 Authority of attorney general to ensure compliance.** The attorney general has the authority to ensure compliance with commitments that inure to the public interest. [1997 c 332 § 11.]

**70.45.120 Acquisitions completed before July 27, 1997, not subject to this chapter.** An acquisition of a hospital completed before July 27, 1997, and an acquisition in which an application for a certificate of need under chapter 70.38 RCW has been granted by the department

before July 27, 1997, is not subject to this chapter. [1997 c 332 § 12.]

**70.45.130 Common law and statutory authority of attorney general.** No provision of this chapter derogates from the common law or statutory authority of the attorney general. [1997 c 332 § 13.]

**70.45.140 Rule-making and contracting authority.** The department may adopt rules necessary to implement this chapter and may contract with and provide reasonable reimbursement to qualified persons to assist in determining whether the requirements of RCW 70.45.070 and 70.45.080 have been met. [1997 c 332 § 14.]

**70.45.900 Severability—1997 c 332.** 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. [1997 c 332 § 19.]

## Chapter 70.47

### BASIC HEALTH PLAN—HEALTH CARE ACCESS ACT

#### Sections

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| 70.47.015 | Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for agents and brokers. |
| 70.47.020 | Definitions.   |
| 70.47.060 | Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment.  |
| 70.47.120 | Administrator—Contracts for services.  |
| 70.47.130 | Exemption from insurance code.   |

**70.47.015 Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for agents and brokers.** (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) It is the intent of the legislature that the basic health plan enrollment be expanded expeditiously, consistent with funds available in the health services account, with the goal of two hundred thousand adult subsidized basic health plan enrollees and one hundred thirty thousand children covered through expanded medical assistance services by June 30, 1997, with the priority of providing needed health services to children in conjunction with other public programs.

(3) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their

families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(5) No later than July 1, 1996, the administrator shall implement procedures whereby health insurance agents and brokers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Brokers and agents may receive a commission for each individual sale of the basic health plan to anyone not signed up within the previous five years and a commission for each group sale of the basic health plan, if funding for this purpose is provided in a specific appropriation to the health care authority. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The administrator may establish: (a) Minimum educational requirements that must be completed by the agents or brokers; (b) an appointment process for agents or brokers marketing the basic health plan; or (c) standards for revocation of the appointment of an agent or broker to submit applications for cause, including untrustworthy or incompetent conduct or harm to the public. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process. [1997 c 337 § 1; 1995 c 265 § 1.]

**Effective date—1997 c 337 §§ 1 and 2:** "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997." [1997 c 337 § 9.]

**Captions not law—1995 c 265:** "Captions as used in this act constitute no part of the law." [1995 c 265 § 29.]

**Effective date—1995 c 265:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995, except that sections 13 through 18 of this act shall take effect January 1, 1996." [1995 c 265 § 30.]

**Savings—1995 c 265:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 265 § 31.]

**Severability—1995 c 265:** "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." [1995 c 265 § 32.]

#### **70.47.020 Definitions.** As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment on a prepaid capitated basis for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, on a prepaid capitated basis to a defined patient population enrolled in the plan and in the managed health care system.

(4) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) whose gross family income at the time of enrollment does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and (e) who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan.

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) who chooses to obtain basic health care coverage from a particular managed health care system; and (e) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(7) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee or a nonsubsidized enrollee.

(8) "Rate" means the per capita amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized and nonsubsidized enrollees in the plan and in that system. [1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

**Effective date—1995 c 266:** See note following RCW 70.47.060.

**Effective date—1995 c 2:** See note following RCW 43.72.090.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment.** The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for groups of subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, \*RCW 48.42.080, and such other factors as the administrator deems appropriate.

However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that the services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator.

(d) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 1996, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To design and implement a structure of enrollee cost sharing due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine,



upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If, as a result of an eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee knowingly failed to inform the plan of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the federal poverty level. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this

chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(16) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions. [1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206. Prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

**Reviser's note:** \*(1) RCW 48.42.080 was recodified as RCW 48.47.030 pursuant to 1997 c 412 § 6.

(2) This section was amended by 1997 c 231 § 206, 1997 c 245 § 6, 1997 c 335 § 2, and by 1997 c 337 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 337 §§ 1 and 2:** See note following RCW 70.47.015.

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**Effective date—1995 c 266:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 266 § 5.]

**Effective date—1995 c 2:** See note following RCW 43.72.090.

**Contingency—1994 c 309 §§ 5 and 6:** "If a court in a permanent injunction, permanent order, or final decision determines that the amendments made by sections 5 and 6, chapter 309, Laws of 1994, must be submitted to the people for their adoption and ratification, or rejection, as a result of section 13, chapter 2, Laws of 1994, the amendments made by sections 5 and 6, chapter 309, Laws of 1994, shall be null and void." [1994 c 309 § 7.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Severability—1992 c 232:** See note following RCW 43.33A.180.

**Effective date—1991 sp.s. c 4:** See note following RCW 70.47.030.

#### **70.47.120 Administrator—Contracts for services.**

In addition to the powers and duties specified in RCW 70.47.040 and 70.47.060, the administrator has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the administrator in her or his duties to design or revise the schedule of covered basic health care services, and/or to monitor or evaluate the performance of participating managed health care systems.

(2) With public or private agencies, to provide technical or professional assistance to health care providers, particularly public or private nonprofit organizations and providers serving rural areas, who show serious intent and apparent capability to participate in the plan as managed health care systems.

(3) With public or private agencies, including health care service contractors registered under RCW 48.44.015, and doing business in the state, for marketing and administrative services in connection with participation of managed health care systems, enrollment of enrollees, billing and collection services to the administrator, and other administrative functions ordinarily performed by health care service contractors, other than insurance. Any activities of a health care service contractor pursuant to a contract with the administrator under this section shall be exempt from the provisions and requirements of Title 48 RCW except that persons appointed or authorized to solicit applications for enrollment in the basic health plan shall comply with chapter 48.17 RCW. [1997 c 337 § 7; 1987 1st ex.s. c 5 § 14.]

**70.47.130 Exemption from insurance code.** (1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

(b) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with chapter 48.17 RCW. For purposes of this subsection (1)(b), "solicit" does not include distributing information and applications for the basic health plan and responding to questions; and

(c) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously. [1997 c 337 § 8; 1994 c 309 § 6; 1987 1st ex.s. c 5 § 15.]

**Contingency—1994 c 309 §§ 5 and 6:** See note following RCW 70.47.060.

## Chapter 70.48

### CITY AND COUNTY JAILS ACT

#### Sections

- 70.48.310 Jail renovation bond retirement fund—Debt-limit general fund bond retirement account.
- 70.48.470 Registration of sex offenders and kidnapping offenders—Notice to inmates convicted of sex offenses and kidnapping offenses—Notice to sheriffs in counties in which inmate will reside (as amended by 1997 c 113).

70.48.470 Registration of sex offenders—Notice to inmates convicted of sex offenses—Notice to sheriffs in counties and police chiefs in cities in which inmate will reside (as amended by 1997 c 364).

70.48.480 Communicable disease prevention guidelines.

**70.48.310 Jail renovation bond retirement fund—Debt-limit general fund bond retirement account.** 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 debt-limit general fund bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the debt-limit general fund bond retirement account shall be used for the purposes of this chapter in lieu of the jail renovation bond retirement fund. [1997 c 456 § 26; 1979 ex.s. c 232 § 7.]

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**70.48.470 Registration of sex offenders and kidnapping offenders—Notice to inmates convicted of sex offenses and kidnapping offenses—Notice to sheriffs in counties in which inmate will reside (as amended by 1997 c 113).** (1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a (~~sexual {sex}~~) sex offense or kidnapping offense as defined in RCW (~~9-94A-030~~) 9A.44.130 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail.

(2) If an inmate convicted of a (~~sexual~~) sex offense or kidnapping offense will reside in a county other than the county of incarceration upon release, the chief law enforcement officer, or his or her designee, shall notify the sheriff of the county where the inmate will reside of the inmate's impending release. Notice shall be provided at least fourteen days prior to the inmate's release, or if the release date is not known at least fourteen days prior to release, notice shall be provided not later than the day after the inmate's release. [1997 c 113 § 7; 1996 c 215 § 2; 1990 c 3 § 406.]

**Findings—1997 c 113:** See note following RCW 4.24.550.

**70.48.470 Registration of sex offenders—Notice to inmates convicted of sex offenses—Notice to sheriffs in counties and police chiefs in cities in which inmate will reside (as amended by 1997 c 364).** (1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a (~~sexual {sex}~~) sex offense as defined in RCW 9.94A.030 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail and, where applicable, the city.

~~(2) (If an inmate convicted of a sexual offense will reside in a county other than the county of incarceration upon release, the chief law enforcement officer, or his or her designee, shall notify the sheriff of the county where the inmate will reside of the inmate's impending release. Notice shall be provided at least fourteen days prior to the inmate's release, or if the release date is not known at least fourteen days prior to release, notice shall be provided not later than the day after the inmate's release.) When a sex offender under local government jurisdiction will reside in a county other than the county of conviction upon discharge or release, the chief law enforcement officer of the jail or his or her designee shall give notice of the inmate's discharge or release to the sheriff of the county and, where applicable, to the police chief of the city where the offender will reside. [1997 c 364 § 3; 1996 c 215 § 2; 1990 c 3 § 406.]~~

**Reviser's note:** RCW 70.48.470 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability—1997 c 364:** See note following RCW 4.24.550.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**70.48.480 Communicable disease prevention guidelines.** (1) Local jail administrators shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all jail staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders or detainees with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means a sexually transmitted disease, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 5.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

## Chapter 70.48A

### JAIL IMPROVEMENT AND CONSTRUCTION— BOND ISSUE

#### Sections

70.48A.070 Bonds—Payment of interest, retirement.

**70.48A.070 Bonds—Payment of interest, retirement.** The debt-limit general fund bond retirement account shall be used for the payment of principal and interest on and retirement of the bonds authorized by RCW 70.48A.010 through 70.48A.080.

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 debt-limit general fund bond retirement account 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. [1997 c 456 § 27; 1981 c 131 § 7.]

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

## Chapter 70.58

### VITAL STATISTICS

#### Sections

70.58.055 Certificates generally.

70.58.080 Birth certificates—Filing—Establishing paternity—Surname of child.

70.58.082 Birth certificates—Rules—Release of copies.

70.58.107 Fees charged by department and local registrars.

**70.58.055 Certificates generally.** (1) To promote and maintain nation-wide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the items recommended by the federal agency responsible for national vital statistics including social security numbers.

(2) The state board of health by rule 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 the court. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. [1997 c 58 § 948; 1991 c 96 § 1.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**70.58.080 Birth certificates—Filing—Establishing paternity—Surname of child.** (1) Within ten days after the birth of any child, the attending physician, midwife, or his or her agent shall:

(a) Fill out a certificate of birth, giving all of the particulars required, including: (i) The mother's name and date of birth, and (ii) if the mother and father are married at the time of birth or the father has signed an acknowledgment of paternity, the father's name and date of birth; and

(b) File the certificate of birth together with the mother's and father's social security numbers with the state registrar of vital statistics.

(2) The local registrar shall forward the birth certificate, any signed affidavit acknowledging paternity, and the mother's and father's social security numbers to the state office of vital statistics pursuant to RCW 70.58.030.

(3) The state registrar of vital statistics shall make available to the division of child support the birth certificates, the mother's and father's social security numbers and paternity affidavits.

(4) Upon the birth of a child to an unmarried woman, the attending physician, midwife, or his or her agent shall:

(a) Provide an opportunity for the child's mother and natural father to complete an affidavit acknowledging paternity. The completed affidavit shall be filed with the state registrar of vital statistics. The affidavit shall contain or have attached:

(i) A sworn statement by the mother consenting to the assertion of paternity and stating that this is the only possible father;

(ii) A statement by the father that he is the natural father of the child;

(iii) A sworn statement signed by the mother and the putative father that each has been given notice, both orally and in writing, of the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor, any rights afforded due to minority status, and responsibilities that arise from, signing the affidavit acknowledging paternity;

(iv) Written information, furnished by the department of social and health services, explaining the implications of signing, including parental rights and responsibilities; and

(v) The social security numbers of both parents.

(b) Provide written information and oral information, furnished by the department of social and health services, to the mother and the father regarding the benefits of having the child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services. The oral and written information shall also include information regarding the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor any rights afforded due to minority status, and responsibilities that arise from, signing the affidavit acknowledging paternity.

(5) The physician or midwife or his or her agent is entitled to reimbursement for reasonable costs, which the department shall establish by rule, when an affidavit acknowledging paternity is filed with the state registrar of vital statistics.

(6) 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.

(7) 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.

(8) 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". [1997 c 58 § 937; 1989 c 55 § 2; 1961 ex.s. c 5 § 8; 1951 c 106 § 6; 1907 c 83 § 12; RRS § 6029.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Implementation—1994 c 299:** "The department of social and health services shall make a substantial effort to determine the identity of the noncustodial parent through consistent implementation of RCW 70.58.080. By December 1, 1994, the department of social and health services shall report to the fiscal committees of the legislature on the method for validating claims of good cause for refusing to establish paternity, the methods used in other states, and the national average rate of claims of good cause for refusing to establish paternity compared to the Washington state rate of claims of good cause for refusing to establish paternity, the reasons for differences in the rates, and steps that may be taken to reduce these differences." [1994 c 299 § 13.]

**70.58.082 Birth certificates—Rules—Release of copies.** No person may prepare or issue any birth certificate that purports to be an original, certified copy, or copy of a birth certificate except as authorized in this chapter.

The department shall adopt rules providing for the release of paper or electronic copies of birth certificate records that include adequate standards for security and confidentiality, assure the proper record is identified, and prevent fraudulent use of records. All certified copies of birth certificates in the state must be on paper and in a format provided and approved by the department and must include security features to deter the alteration, counterfeiting, duplication, or simulation without ready detection.

Federal, state, and local governmental agencies may, upon request and with submission of the appropriate fee, be furnished copies of birth certificates if the birth certificate will be used for the agencies' official duties. The department may enter into agreements with offices of vital statistics outside the state for the transmission of copies of birth certificates to those offices when the birth certificates relate to residents of those jurisdictions and receipt of copies of birth certificates from those offices. The agreement must specify the statistical and administrative purposes for which the birth certificates may be used and must provide instructions for the proper retention and disposition of the copies. Copies of birth certificates that are received by the department from other offices of vital statistics outside the state must be handled as provided under the agreements.

The department may disclose information that may identify any person named in any birth certificate record for research purposes as provided under chapter 42.48 RCW. [1997 c 108 § 1.]

**70.58.107 Fees charged by department and local registrars.** The department of health shall charge a fee of thirteen dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall

prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration.

The department shall keep a true and correct account of all fees received and turn the fees over to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation, except that local registrars shall charge thirteen dollars for the first copy of a death certificate and eight dollars for each additional copy of the same death certificate when the additional copies are ordered at the same time as the first copy. All such fees collected, except for five dollars of each fee for the issuance of a certified copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall turn five dollars of the fee over to the state treasurer on or before the first day of January, April, July, and October.

Five dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445. [1997 c 223 § 1; 1991 c 3 § 343; 1988 c 40 § 1; 1987 c 223 § 3.]

## Chapter 70.74

### WASHINGTON STATE EXPLOSIVES ACT

#### Sections

|           |   |
|-----------|---|
| 70.74.110 | Manufacturer's report—Inspection—License.             |
| 70.74.130 | Dealer in explosives—Application—License.             |
| 70.74.270 | Malicious placement of an explosive—Penalties.        |
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| 70.74.280 | Malicious explosion of a substance—Penalties.         |
| 70.74.285 | "Terrorist act" defined.                              |
| 70.74.370 | License revocation, nonrenewal, or suspension.        |

**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 August 11, 1969, 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 August 11, 1969, 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.

Except as provided in RCW 70.74.370, the department of labor and industries shall as soon as possible 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 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the manufacture of explosives and the applicant meets the qualifications for a license under RCW 70.74.360. Such license shall continue in full force and effect until expired, suspended, or revoked by the department pursuant to this chapter. [1997 c 58 § 870; 1988 c 198 § 5; 1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**70.74.130 Dealer in explosives—Application—License.** 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.

Except as provided in RCW 70.74.370, the department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the principal officers, agents, or employees of the applicant are experienced in the business of dealing in explosives, possess suitable facilities therefor, have not been convicted of any crime that would warrant revocation or nonrenewal of a license under this chapter, and have never had an explosives-related license revoked under this chapter or under similar provisions of any other state. [1997 c 58 § 871; 1988 c 198 § 7; 1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**70.74.270 Malicious placement of an explosive—Penalties.** A person who maliciously places any explosive or improvised device 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 it if exploded is guilty of:

(1) Malicious placement of an explosive in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an explosive in the first degree is a class A felony;

(2) Malicious placement of an explosive in the second degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first degree and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion. Malicious placement of an explosive in the second degree is a class B felony;

(3) Malicious placement of an explosive in the third degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first or second degree. Malicious placement of an explosive in the third degree is a class B felony. [1997 c 120 § 1; 1993 c 293 § 6; 1992 c 7 § 49; 1984 c 55 § 2; 1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

**Severability—1993 c 293:** See note following RCW 70.74.010.

**70.74.272 Malicious placement of an imitation device—Penalties.** (1) A person who maliciously places any imitation device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, with the intent to give the appearance or impression that the imitation device is an explosive or improvised device, is guilty of:

(a) Malicious placement of an imitation device in the first degree if the offense is committed with intent to commit

a terrorist act. Malicious placement of an imitation device in the first degree is a class B felony;

(b) Malicious placement of an imitation device in the second degree if the offense is committed under circumstances not amounting to malicious placement of an imitation device in the first degree. Malicious placement of an imitation device in the second degree is a class C felony.

(2) For purposes of this section, "imitation device" means a device or substance that is not an explosive or improvised device, but which by appearance or representation would lead a reasonable person to believe that the device or substance is an explosive or improvised device. [1997 c 120 § 2.]

**70.74.280 Malicious explosion of a substance—Penalties.** A person who 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, or public utility transmission system or structure is guilty of:

(1) Malicious explosion of a substance in the first degree if the offense is committed with intent to commit a terrorist act. Malicious explosion of a substance in the first degree is a class A felony;

(2) Malicious explosion of a substance in the second degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first degree and if thereby the life or safety of a human being is endangered. Malicious explosion of a substance in the second degree is a class A felony;

(3) Malicious explosion of a substance in the third degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first or second degree. Malicious explosion of a substance in the third degree is a class B felony. [1997 c 120 § 3; 1992 c 7 § 50; 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.

**70.74.285 "Terrorist act" defined.** For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280 "terrorist act" means an act that is intended to: (1) Intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government. [1997 c 120 § 4.]

**70.74.370 License revocation, nonrenewal, or suspension.** (1) The department of labor and industries shall revoke and not renew the license of any person holding a manufacturer, dealer, purchaser, user, or storage license upon conviction of any of the following offenses, which conviction has become final:

(a) A violent offense as defined in RCW 9.94A.030;

(b) A crime involving perjury or false swearing, including the making of a false affidavit or statement under oath to the department of labor and industries in an application or report made pursuant to this title;

(c) A crime involving bomb threats;

(d) A crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the department of labor and industries may condition renewal of the license to any convicted person suffering a drug or alcohol dependency who is participating in an alcoholism or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The department of labor and industries shall require the licensee to provide proof of such participation and control;

(e) A crime relating to possession, use, transfer, or sale of explosives under this chapter or any other chapter of the Revised Code of Washington.

(2) The department of labor and industries shall revoke the license of any person adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease. The director shall not renew the license until the person has been restored to competency.

(3) The department of labor and industries is authorized to suspend, for a period of time not to exceed six months, the license of any person who has violated this chapter or the rules promulgated pursuant to this chapter.

(4) The department of labor and industries may revoke the license of any person who has repeatedly violated this chapter or the rules promulgated pursuant to this chapter, or who has twice had his or her license suspended under this chapter.

(5) The department of labor and industries shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department of labor and industries' receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(6) Upon receipt of notification by the department of labor and industries of revocation or suspension, a licensee must surrender immediately to the department any or all such licenses revoked or suspended. [1997 c 58 § 872; 1988 c 198 § 4.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 70.77

### STATE FIREWORKS LAW

#### Sections

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| 70.77.450 | Examination, inspection of books and premises.   |
| 70.77.455 | Licensees to maintain and make available complete records—Exemption from public disclosure act.  |

**70.77.160 Definitions—"Public display of fireworks."** "Public display of fireworks" means an entertainment feature where the public is admitted or allowed to view the display or discharge of special fireworks. [1997 c 182 § 1; 1982 c 230 § 6; 1961 c 228 § 9.]

**Severability—1997 c 182:** "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." [1997 c 182 § 26.]

**Effective date—1997 c 182:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 1997]." [1997 c 182 § 27.]

**70.77.236 Definitions—"New fireworks item."** (1) "New fireworks item" means any fireworks initially classified or reclassified as special or common fireworks by the United States bureau of explosives or in the regulations of the United States department of transportation after April 17, 1995.

(2) The chief of the Washington state patrol through the director of fire protection shall classify any new fireworks item in the same manner as the item is classified by the United States bureau of explosives or in the regulations of the United States department of transportation, unless the chief of the Washington state patrol through the director of fire protection determines, stating reasonable grounds, that the item should not be so classified. [1997 c 182 § 4; 1995 c 61 § 6.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**70.77.250 Chief of the Washington state patrol to enforce and administer—Powers and duties.** (1) The



chief of the Washington state patrol, through the director of fire protection, shall enforce and administer this chapter.

(2) The chief of the Washington state patrol, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules relating to fireworks as are necessary for the implementation of this chapter.

(4) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules as are necessary to ensure state-wide minimum standards for the enforcement of this chapter. Counties, cities, and towns shall comply with these state rules. Any local rules adopted by local authorities that are more restrictive than state law shall have an effective date no sooner than one year after their adoption.

(5) The chief of the Washington state patrol, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency or local government. [1997 c 182 § 5. Prior: 1995 c 369 § 45; 1995 c 61 § 12; 1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.255 Acts prohibited without appropriate licenses and permits—Minimum age for license or permit—Activities permitted without license or permit.**

(1) Except as otherwise provided in this chapter, no person, without appropriate state licenses and city or county permits as required by this chapter may:

(a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

(b) Make a public display of fireworks;

(c) Transport fireworks, except as a public carrier delivering to a licensee; or

(d) Knowingly manufacture, import, transport, store, sell, or possess with intent to sell, as fireworks, explosives, as defined under RCW 70.74.010, that are not fireworks, as defined under this chapter.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section or as provided in RCW 70.77.311, no person may discharge special fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of common fireworks lawfully purchased at retail. [1997 c 182 § 6; 1995 c 61 § 13; 1994 c 133 § 4; 1984 c 249 § 10; 1982 c 230 § 14; 1961 c 228 § 28.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—Effective date—1994 c 133:** See notes following RCW 70.77.146.

**70.77.270 Governing body to grant permits—State-wide standards—Liability insurance.** (1) The governing body of a city or county, or a designee, shall grant an application for a permit under RCW 70.77.260(1) if the application meets the standards under this chapter, and the applicable ordinances of the city or county. The permit shall be granted by June 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing on June 28 and on December 27; or by December 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing only on December 27.

(2) The chief of the Washington state patrol, through the director of fire protection, shall prescribe uniform, state-wide standards for retail fireworks stands including, but not limited to, the location of the stands, setback requirements and siting of the stands, types of buildings and construction material that may be used for the stands, use of the stands and areas around the stands, cleanup of the area around the stands, transportation of fireworks to and from the stands, and temporary storage of fireworks associated with the retail fireworks stands. All cities and counties which allow retail fireworks sales shall comply with these standards.

(3) No retail fireworks permit may be issued to any applicant unless the retail fireworks stand is covered by a liability insurance policy with coverage of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not readily available from at least three approved insurance companies. If insurance in this amount is not offered, each fireworks permit shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

No wholesaler may knowingly sell or supply fireworks to any retail fireworks stand unless the wholesaler determines that the retail fireworks stand is covered by liability insurance in the same amount as provided in this subsection. [1997 c 182 § 8; 1995 c 61 § 14; 1994 c 133 § 6; 1984 c 249 § 13; 1961 c 228 § 31.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—Effective date—1994 c 133:** See notes following RCW 70.77.146.

**70.77.290 Public display permit—Granted for exclusive purpose.** If a permit under RCW 70.77.260(2) 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. [1997 c 182 § 9; 1984 c 249 § 16; 1961 c 228 § 35.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**70.77.315 Application for license.** Any person who desires to engage in the manufacture, importation, sale, or use of fireworks, except use as provided in RCW 70.77.255(4) and 70.77.311, shall make a written application to the chief of the Washington state patrol, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [1997 c 182 § 10. Prior: 1995 c 369 § 47; 1995 c 61 § 18; 1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.325 Annual application for a license—Dates.**

(1) An application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license during an additional year. The application shall be accompanied by the annual license fees as prescribed in RCW 70.77.343 and 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application no later than May 1 for annual sales commencing on June 28 and on December 27, or no later than November 1 for sales commencing only on December 27. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application. [1997 c 182 § 11; 1994 c 133 § 8; 1991 c 135 § 4; 1986 c 266 § 103; 1984 c 249 § 20; 1982 c 230 § 21; 1961 c 228 § 42.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1994 c 133:** See notes following RCW 70.77.146.

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.343 License fees—Additional.** (1) License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

|  |             |
|--|-------------|
| Manufacturer . . . . .                               | \$ 1,500.00 |
| Importer . . . . .                                   | 900.00      |
| Wholesaler . . . . .                                 | 1,000.00    |
| Retailer (for each separate outlet) . . . . .        | 30.00       |
| Public display for special fireworks . . . . .       | 40.00       |
| Pyrotechnic operator for special fireworks . . . . . | 5.00        |

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund and at least seventy-five percent of these receipts shall be used to fund a state-wide public education campaign developed by the chief of the Washington state patrol and the licensed fireworks industry emphasizing the safe and responsible use of legal

fireworks and the remaining receipts shall be used to fund state-wide enforcement efforts against the sale and use of fireworks that are illegal under this chapter. [1997 c 182 § 12; 1995 c 61 § 19; 1991 c 135 § 6.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

**70.77.345 Duration of licenses and retail fireworks sales permits.** Every license and every retail fireworks sales permit issued shall be for the period from January 1st of the year for which the application is made through January 31st of the subsequent year, or the remaining portion thereof. [1997 c 182 § 13; 1995 c 61 § 20; 1991 c 135 § 5; 1982 c 230 § 25; 1961 c 228 § 46.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

**70.77.355 General license for public display—Surety bond or insurance—Filing of license certificate with local permit application.** (1) Any adult person may secure a general license from the chief of the Washington state patrol, through the director of fire protection, for the public display of fireworks within the state of Washington. A general license is 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 bond or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285, the same bond or certificate shall be filed with the chief of the Washington state patrol, through the director of fire protection. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the chief of the Washington state patrol, through the director of fire protection; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only insofar as any operations under contract are concerned; and (c) the state is not responsible for any premium or assessments on the policy.

(2) The chief of the Washington state patrol, through the director of fire protection, may issue such general licenses. The holder of a general license shall file a certificate from the chief of the Washington state patrol, through the director of fire protection, evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260. [1997 c 182 § 14; 1994 c 133 § 9; 1986 c 266 § 105; 1984 c 249 § 21; 1982 c 230 § 26; 1961 c 228 § 48.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1994 c 133:** See notes following RCW 70.77.146.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.375 Revocation of license.** The chief of the Washington state patrol, through the director of fire protection, upon reasonable opportunity to be heard, may revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule made by the chief of the Washington state patrol, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) 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 chief of the Washington state patrol, through the director of fire protection, in refusing originally to issue such license. [1997 c 182 § 16; 1995 c 369 § 51; 1995 c 61 § 21; 1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

**Reviser's note:** RCW 70.77.375 was amended twice during the 1995 legislative session, each without reference to the other. This section was subsequently amended by 1997 c 182 § 16, combining the text of the 1995 amendments, but not reenacting those sections. Any subsequent amendments to this section should include the 1997 and both 1995 histories in a reenactment.

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.420 Storage permit required—Application—Investigation—Grant or denial—Conditions.** (1) It is unlawful for any person to store fireworks of any class without a permit for such storage from the city or county in which the storage is to be made. A person proposing to store fireworks shall apply in writing to a city or county at least ten days prior to the date of the proposed storage. The city or county receiving the application for a storage permit shall investigate whether the character and location of the storage as proposed would constitute a hazard to property or be dangerous to any person. Based on the investigation, the city or county may grant or deny the application. The city or county may place reasonable conditions on any permit granted.

(2) For the purposes of this section the temporary storing or keeping of common fireworks when in conjunction with a valid retail sales license and permit shall comply with RCW 70.77.425 and the standards adopted under RCW 70.77.270(2) and not this section. [1997 c 182 § 18; 1984 c 249 § 26; 1982 c 230 § 34; 1961 c 228 § 61.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**70.77.435 Seizure of fireworks.** Any fireworks 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 chief of the Washington state patrol, through the director of fire protection, shall be subject to seizure by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. Any fireworks seized by legal process anywhere in the state may be disposed of by the chief of the Washington state patrol, through the director of fire protection, or the agency conducting the seizure, 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. [1997 c 182 § 20; 1995 c 61 § 23; 1994 c 133 § 11; 1986 c 266 § 111; 1982 c 230 § 37; 1961 c 228 § 64.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—Effective date—1994 c 133:** See notes following RCW 70.77.146.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks.** (1) In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The chief of the Washington state patrol or a designee, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks 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.

(2) If no person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fireworks within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty 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 an administrative law judge appointed under chapter 34.12 RCW, 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 seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 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 attorneys' fees. The burden of producing evidence shall be upon the person claiming to

have the lawful right to possession of the seized fireworks. The chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, shall promptly return the fireworks to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction; or

(b) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the chief of the Washington state patrol, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the fire services trust fund and shall be used for the same purposes and in the same percentages as specified in RCW 70.77.343. [1997 c 182 § 21; 1995 c 61 § 24; 1994 c 133 § 12; 1986 c 266 § 112; 1984 c 249 § 29; 1961 c 228 § 65.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—Effective date—1994 c 133:** See notes following RCW 70.77.146.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.450 Examination, inspection of books and premises.** The chief of the Washington state patrol, through the director of fire protection, 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 chief of the Washington state patrol, through the director of fire protection, his or her deputies or salaried assistants, the local fire official, and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [1997 c 182 § 22; 1994 c 133 § 13; 1986 c 266 § 113; 1961 c 228 § 67.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Severability—Effective date—1994 c 133:** See notes following RCW 70.77.146.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**70.77.455 Licensees to maintain and make available complete records—Exemption from public disclosure act.**

(1) All licensees shall maintain and make available to the chief of the Washington state patrol, through the director of

fire protection, full and complete records showing all production, imports, exports, purchases, and sales of fireworks items by class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public disclosure act under chapter 42.17 RCW. [1997 c 182 § 23. Prior: 1995 c 369 § 54; 1995 c 61 § 25; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

**Severability—Effective date—1997 c 182:** See notes following RCW 70.77.160.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—Effective date—1995 c 61:** See notes following RCW 70.77.111.

**Severability—1986 c 266:** See note following RCW 38.52.005.

## Chapter 70.84

### BLIND, HANDICAPPED, AND DISABLED PERSONS—"WHITE CANE LAW"

#### Sections

|           |   |
|-----------|---|
| 70.84.020 | "Dog guide" defined.  |
| 70.84.021 | "Service animal" defined.   |
| 70.84.030 | Repealed.   |
| 70.84.040 | Precautions for drivers of motor vehicles approaching pedestrian who is using a white cane, dog guide, or service animal. |
| 70.84.050 | Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges.                                 |
| 70.84.060 | Unauthorized use of white cane, dog guide, or service animal.   |
| 70.84.090 | Recodified as RCW 49.60.360.  |
| 70.84.100 | Recodified as RCW 49.60.370.  |
| 70.84.110 | Repealed.   |
| 70.84.120 | Recodified as RCW 49.60.380.  |

**70.84.020 "Dog guide" defined.** For the purpose of this chapter, the term "dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons. [1997 c 271 § 18; 1980 c 109 § 2; 1969 c 141 § 2.]

**70.84.021 "Service animal" defined.** For the purpose of this chapter, "service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability. [1997 c 271 § 19; 1985 c 90 § 1.]

**70.84.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**70.84.040 Precautions for drivers of motor vehicles approaching pedestrian who is using a white cane, dog guide, or service animal.** 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), a totally or partially blind or hearing impaired pedestrian using a dog guide, or an otherwise physically disabled person using a service animal shall take all necessary precautions to avoid injury to such 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, such pedestrian, crossing or attempting to cross the roadway, if such pedestrian is using a white cane, using a dog guide, or using a service animal. The failure of any such pedestrian so to signal shall not deprive him of the right of way accorded him by other laws. [1997 c 271 § 20; 1985 c 90 § 3; 1980 c 109 § 4; 1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

**70.84.050 Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges.** A totally or partially blind pedestrian not carrying a white cane or a totally or partially blind or hearing impaired pedestrian not using a dog guide 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. [1997 c 271 § 21; 1980 c 109 § 5; 1969 c 141 § 5.]

**70.84.060 Unauthorized use of white cane, dog guide, or service animal.** It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or any pedestrian who is not totally or partially blind or is not hearing impaired to use a dog guide or any pedestrian who is not otherwise physically disabled to use a service animal 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, hearing impaired, or otherwise physically disabled people. [1997 c 271 § 22; 1985 c 90 § 4; 1980 c 109 § 6; 1969 c 141 § 6.]

**70.84.090 Recodified as RCW 49.60.360.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**70.84.100 Recodified as RCW 49.60.370.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**70.84.110 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**70.84.120 Recodified as RCW 49.60.380.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 70.87

### ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

#### Sections

|           |   |
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| 70.87.010 | Definitions.  |
| 70.87.120 | Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Investigation by department. |

**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, dumb-waiter, belt manlift, automobile parking elevator, or moving walk, all as defined in this section;

(3) "Existing installations" means all conveyances for which plans were completed and accepted by the owner, or for which the plans and specifications have been filed with and approved by the department before June 13, 1963, 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 that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that 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 (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) has no landing opening into the building at its upper limit of travel, and (iii) 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 (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) 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 (c) in which no persons are normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department to construct, install, or operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings;

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another. [1997 c 216 § 1; 1983 c 123 § 1; 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.

#### **70.87.120 Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Investigation by department.**

(1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the Washington personnel resources board in accordance with chapter 41.06 RCW.

(2)(a) Except as provided in (b) of this subsection, the department shall cause all conveyances to be inspected and tested at least once each year. Inspectors 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 adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(b)(i) Private residence conveyances operated exclusively for single-family use shall be inspected and tested only when required under RCW 70.87.100 or as necessary for the purposes of subsection (4) of this section.

(ii) The department may perform additional inspections of a private residence conveyance at the request of the owner of the conveyance. Fees for these inspections shall be in accordance with the schedule of fees adopted for operating permits pursuant to RCW 70.87.030. An inspection requested under this subsection (2)(b)(ii) shall not be performed until the required fees have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and may also suspend or revoke a permit pursuant to RCW 70.87.125 or order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(4) The department may investigate accidents and alleged or apparent violations of this chapter. [1997 c 216 § 2; 1993 c 281 § 61; 1983 c 123 § 13; 1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

**Effective date—1993 c 281:** See note following RCW 41.06.022.

### **Chapter 70.88**

#### **CONVEYANCES FOR PERSONS IN RECREATIONAL ACTIVITIES**

##### Sections

70.88.070 Costs of inspection and plan review—Lien—Disposition of funds.

**70.88.070 Costs of inspection and plan review—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 plan review for construction approval 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 and plan review for construction approval. 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 under this section shall be paid into the state parks renewal and stewardship account. [1997 c 137 § 5; 1990 c 136 § 1; 1975 1st ex.s. c 74 § 1; 1961 c 253 § 2; 1959 c 327 § 7.]

**Effective date—1997 c 137:** See note following RCW 43.51.050.  
*Parks and parkways account abolished:* RCW 43.79.405.

### **Chapter 70.93**

#### **WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT**

(Formerly: Model litter control and recycling act)

##### Sections

70.93.060 Littering prohibited—Penalties.

**70.93.060 Littering prohibited—Penalties.** (1) 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 her 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:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of said private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount greater than one

cubic foot. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community service in the state park where the violation occurred if the state park has stated an intent to participate as provided in RCW 43.51.048(2).

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, a cigarette, cigar, or other tobacco product that is capable of starting a fire. [1997 c 159 § 1; 1996 c 263 § 1; 1993 c 292 § 1; 1983 c 277 § 1; 1979 ex.s. c 39 § 1; 1971 ex.s. c 307 § 6.]

## Chapter 70.94

### WASHINGTON CLEAN AIR ACT

#### Sections

|           |   |
|-----------|---|
| 70.94.033 | Environmental excellence program agreements—Effect on chapter.  |
| 70.94.151 | Classification of air contaminant sources—Registration—Fee—Registration program defined.  |
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| 70.94.630 | Sulfur dioxide abatement account—Coal-fired thermal electric generation facilities—Application—Determination and assessment of progress—Certification of pollution level—Reimbursement—Time limit for and extension of account. |
| 70.94.743 | Outdoor burning—Areas where prohibited—Use for management of storm or flood-related debris—Silvicultural burning.   |
| 70.94.755 | Limited outdoor burning—Establishment of program.   |

**70.94.033 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 21.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**70.94.151 Classification of air contaminant sources—Registration—Fee—Registration program defined.**

(1) The board of any activated authority or the department, 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) Except as provided in subsection (3) of this section, 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 department or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such department 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 department 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 which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: **PROVIDED FURTHER**, That any such registration made with either the board or the department shall preclude a further registration with any other board or the department.

All registration program fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

For the purposes of this subsection, a "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade; and a "license" is a license issued by the department of



agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually. [1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

#### **70.94.521 Transportation demand management—**

**Findings.** The legislature finds that automotive traffic in Washington's metropolitan areas is the major source of emissions of air contaminants. This air pollution causes significant harm to public health, causes damage to trees, plants, structures, and materials and degrades the quality of the environment.

Increasing automotive traffic is also aggravating traffic congestion in Washington's metropolitan areas. This traffic congestion imposes significant costs on Washington's businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services. Traffic congestion worsens automobile-related air pollution, increases the consumption of fuel, and degrades the habitability of many of Washington's cities and suburban areas. The capital and environmental costs of fully accommodating the existing and projected automobile traffic on roads and highways are prohibitive. Decreasing the demand for vehicle trips is significantly less costly and at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities such as roads and bridges, to accommodate increased traffic volumes.

The legislature also finds that increasing automotive transportation is a major factor in increasing consumption of gasoline and, thereby, increasing reliance on imported sources of petroleum. Moderating the growth in automotive travel is essential to stabilizing and reducing dependence on imported petroleum and improving the nation's energy security.

The legislature further finds that reducing the number of commute trips to work made via single-occupant cars and light trucks is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. Major employers have significant opportunities to encourage and facilitate reducing single-occupant vehicle commuting by employees. In addition, the legislature also recognizes the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion, and the contribution individual actions can make towards addressing these issues.

The intent of this chapter is to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips. Such plans shall require major employers and employers at major worksites to implement programs to reduce single-occupant vehicle commuting by employees at major worksites. Local governments in counties experiencing

significant but less severe automobile-related air pollution and traffic congestion may implement such plans. State agencies shall implement programs to reduce single-occupant vehicle commuting at all major worksites throughout the state. [1997 c 250 § 1; 1991 c 202 § 10.]

**Captions not law—Effective date—Severability—1991 c 202:** See notes following RCW 47.50.010.

*Ride-sharing tax incentives:* RCW 82.04.4453.

#### **70.94.527 Transportation demand management—Requirements for counties and cities.**

(1) Each county with a population over one hundred fifty thousand, and each city or town within those counties containing a major employer shall, by October 1, 1992, adopt by ordinance and implement a commute trip reduction plan for all major employers. The plan shall be developed in cooperation with local transit agencies, regional transportation planning organizations as established in RCW 47.80.020, major employers, and the owners of and employers at major worksites. The plan shall be designed to achieve reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee by employees of major public and private sector employers in the jurisdiction.

(2) All other counties, and cities and towns in those counties, may adopt and implement a commute trip reduction plan.

(3) The department of ecology may, after consultation with the department of transportation, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsection (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the guidelines established under RCW 70.94.537 and shall include but is not limited to (a) goals for reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee; (b) designation of commute trip reduction zones; (c) requirements for major public and private sector employers to implement commute trip reduction programs; (d) a commute trip reduction program for employees of the county, city, or town; (e) a review of local parking policies and ordinances as they relate to employers and major worksites and any revisions necessary to comply with commute trip reduction goals and guidelines; (f) an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain waiver or modification of those requirements; and (g) means for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals on an annual basis. Goals which are established shall take into account existing transportation demand management efforts which are made by major employers. Each jurisdiction shall ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip

reduction programs which have been implemented by major employers prior to the base year. The goals for miles traveled per employee for all major employers shall not be less than a fifteen percent reduction from the worksite base year value or the base year value for the commute trip reduction zone in which their worksite is located by January 1, 1995, twenty percent reduction from the base year values by January 1, 1997, twenty-five percent reduction from the base year values by January 1, 1999, and a thirty-five percent reduction from the base year values by January 1, 2005.

(5) A county, city, or town may, as part of its commute trip reduction plan, require commute trip reduction programs for employers with ten or more full time employees at major worksites in federally designated nonattainment areas for carbon monoxide and ozone. The county, city or town shall develop the programs in cooperation with affected employers and provide technical assistance to the employers in implementing such programs.

(6) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, or towns adopting commute trip reduction plans may enter into agreements through the interlocal cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, or regional transportation planning organizations to coordinate the development and implementation of such plans. Transit agencies shall work with counties, cities, and towns to take into account the location of major employer worksites when planning transit service changes or the expansion of public transportation services. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070.

(7) Each county, city, or town implementing a commute trip reduction program shall, within thirty days submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(8) Each county, city, or town implementing a commute trip reduction program shall submit an annual progress report to the commute trip reduction task force established under RCW 70.94.537. The report shall be due July 1, 1994, and each July 1st thereafter through July 1, 2006. The report shall describe progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall be submitted for review to the commute trip reduction task force established under RCW 70.94.537. The commute trip

reduction task force may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Each county, city, or town implementing a commute trip reduction program shall count commute trips eliminated through work-at-home options or alternate work schedules as one and two-tenths vehicle trips eliminated for the purpose of meeting trip reduction goals.

(11) Each county, city, or town implementing a commute trip reduction program shall ensure that employers that have modified their employees' work schedules so that some or all employees are not scheduled to arrive at work between 6:00 a.m. and 9:00 a.m. are provided credit when calculating single-occupancy vehicle use and vehicle miles traveled at that worksite. This credit shall be awarded if implementation of the schedule change was an identified element in that worksite's approved commute trip reduction program or if the schedule change occurred because of impacts associated with chapter 36.70A RCW, the growth management act.

(12) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(13) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years. [1997 c 250 § 2; 1996 c 186 § 513; 1991 c 202 § 12.]

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

**Captions not law—Effective date—Severability—1991 c 202:** See notes following RCW 47.50.010.

**70.94.531 Transportation demand management—Requirements for employers.** (1) Not more than six months after the adoption of the commute trip reduction plan by a jurisdiction, each major employer in that jurisdiction shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than six months after submission to the jurisdiction.

(2) A commute trip reduction program shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) an annual review of employee commuting and reporting of progress toward meeting the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

(i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles;

(ii) Instituting or increasing parking charges for single-occupant vehicles;

(iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;

(iv) Provision of subsidies for transit fares;

(v) Provision of vans for van pools;

(vi) Provision of subsidies for car pooling or van pooling;

(vii) Permitting the use of the employer's vehicles for car pooling or van pooling;

(viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;

(ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;

(x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;

(xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;

(xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;

(xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;

(xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting; and

(xv) Implementation of other measures designed to facilitate the use of high-occupancy vehicles such as on-site day care facilities and emergency taxi services.

(3) Employers or owners of worksites may form or utilize existing transportation management associations to assist members in developing and implementing commute trip reduction programs.

(4) Employers shall make a good faith effort towards achievement of the goals identified in RCW 70.94.527(4)(g). [1997 c 250 § 3; (1995 2nd sp.s. c 14 § 530 expired June 30, 1997); 1991 c 202 § 13.]

**Expiration date**—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

**Effective dates**—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

**Severability**—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

**Captions not law**—**Effective date**—**Severability**—1991 c 202: See notes following RCW 47.50.010.

**70.94.534 Transportation demand management—Jurisdictions' review and penalties.** (1) Each jurisdiction implementing a commute trip reduction plan under this chapter or as part of a plan or ordinance developed under RCW 36.70A.070 shall review each employer's initial commute trip reduction program to determine if the program is likely to meet the applicable commute trip reduction goals. The employer shall be notified by the jurisdiction of its findings. If the jurisdiction finds that the program is not likely to meet the applicable commute trip reduction goals, the jurisdiction will work with the employer to modify the program as necessary. The jurisdiction shall complete review of each employer's initial commute trip reduction program within three months of receipt.

(2) Employers implementing commute trip reduction programs are expected to undertake good faith efforts to achieve the goals outlined in RCW 70.94.527(4). Employers are considered to be making a good faith effort if the following conditions have been met:

(a) The employer has met the minimum requirements identified in RCW 70.94.531; and

(b) The employer is working collaboratively with its jurisdiction to continue its existing program or is developing and implementing program modifications likely to result in improvements to the program over an agreed upon length of time.

(3) Each jurisdiction shall annually review each employer's progress and good faith efforts toward meeting the applicable commute trip reduction goals. If an employer makes a good faith effort, as defined in this section, but is not likely to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to make modifications to the commute trip reduction program. Failure of an employer to reach the applicable commute trip reduction goals is not a violation of this chapter.

(4) If an employer fails to make a good faith effort and fails to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to propose modifications to the program and shall direct the employer to revise its program within thirty days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

(5) Each jurisdiction implementing a commute trip reduction plan pursuant to this chapter may impose civil penalties, in the manner provided in chapter 7.80 RCW, for failure by an employer to implement a commute trip reduction program or to modify its commute trip reduction program as required in subsection (4) of this section. No major employer may be held liable for civil penalties for failure to reach the applicable commute trip reduction goals. No major employer shall be liable for civil penalties under this chapter if failure to achieve a commute trip reduction program goal was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith.

(6) Jurisdictions shall notify major employers of the procedures for applying for goal modification or exemption from the commute trip reduction requirements based on the guidelines established by the commute trip reduction task force. [1997 c 250 § 4; 1991 c 202 § 14.]

**Captions not law**—**Effective date**—**Severability**—1991 c 202: See notes following RCW 47.50.010.

**70.94.537 Transportation demand management—Commute trip reduction task force.** (1) A twenty-eight member state commute trip reduction task force is established as follows:

(a) The secretary of the department of transportation or the secretary's designee who shall serve as chair;

(b) The director of the department of ecology or the director's designee;

(c) The director of the department of community, trade, and economic development or the director's designee;

(d) The director of the department of general administration or the director's designee;

(e) Three representatives from counties appointed by the governor from a list of at least six recommended by the Washington state association of counties;

(f) Three representatives from cities and towns appointed by the governor from a list of at least six recommended by the association of Washington cities;

(g) Three representatives from transit agencies appointed by the governor from a list of at least six recommended by the Washington state transit association;

(h) Twelve representatives of employers at or owners of major worksites in Washington appointed by the governor from a list recommended by the association of Washington business or other state-wide business associations representing major employers, provided that every affected county shall have at least one representative; and

(i) Three citizens appointed by the governor.

Members of the commute trip reduction task force shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The task force has all powers necessary to carry out its duties as prescribed by this chapter. The task force shall be dissolved on July 1, 2006.

(2) By March 1, 1992, the commute trip reduction task force shall establish guidelines for commute trip reduction plans. The guidelines are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the task force determines to be relevant. The guidelines shall include:

(a) Criteria for establishing commute trip reduction zones;

(b) Methods and information requirements for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Methods to ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year;

(g) Alternative commute trip reduction goals for major employers which cannot meet the goals of this chapter because of the unique nature of their business;

(h) Alternative commute trip reduction goals for major employers whose worksites change and who contribute substantially to traffic congestion in a trip reduction zone; and

(i) Methods to insure that employers receive credit for scheduling changes enacted pursuant to the criteria identified in RCW 70.94.527(11).

(3) The task force shall work with jurisdictions, major employers, and other parties to develop and implement a public awareness campaign designed to increase the effectiveness of local commute trip reduction programs and support achievement of the objectives identified in this chapter.

(4) The task force shall assess the commute trip reduction options available to employers other than major employers and make recommendations to the legislature by October 1, 1992. The recommendations shall include the minimum size of employer who shall be required to implement trip reduction programs and the appropriate methods those employers can use to accomplish trip reduction goals.

(5) The task force shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature by December 1, 1995, December 1, 1999, December 1, 2001, December 1, 2003, and December 1, 2005. In assessing the costs and benefits, the task force shall consider the costs of not having implemented commute trip reduction plans and programs. The task force shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter. The recommendations made December 1, 1995, shall include recommendations regarding extension of the requirements of this chapter to employers with fifty or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for more than twelve continuous months. [1997 c 250 § 5; 1996 c 186 § 514; 1995 c 399 § 188; 1991 c 202 § 15.]

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

**Captions not law—Effective date—Severability—1991 c 202:** See notes following RCW 47.50.010.

**70.94.551 Transportation demand management—State agency plan.** (1) The director of general administration, with the concurrence of an interagency task force established for the purposes of this section, shall coordinate a commute trip reduction plan for state agencies which are phase I major employers by January 1, 1993. The task force shall include representatives of the departments of transportation and ecology and such other departments as the director of general administration determines to be necessary to be generally representative of state agencies. The state agency plan shall be consistent with the requirements of RCW 70.94.527 and 70.94.531 and shall be developed in consultation with state employees, local and regional governments, local transit agencies, the business community, and other interested groups. The plan shall consider and recommend policies applicable to all state agencies including but not limited to policies regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and van pools. The plan shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding

state agency commute trip reduction programs. The department shall, within thirty days, submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(2) Not more than three months after the adoption of the commute trip reduction plan, each state agency shall, for each facility which is a major employer, develop a commute trip reduction program. The program shall be designed to meet the goals of the commute trip reduction plan of the county, city, or town or, if there is no local commute trip reduction plan, the state. The program shall be consistent with the policies of the state commute trip reduction plan and RCW 70.94.531. The agency shall submit a description of that program to the local jurisdiction implementing a commute trip reduction plan or, if there is no local commute trip reduction plan, to the department of general administration. The program shall be implemented not more than three months after submission to the department. Annual reports required in RCW 70.94.531(2)(c) shall be submitted to the local jurisdiction implementing a commute trip reduction plan and to the department of general administration. An agency which is not meeting the applicable commute trip reduction goals shall, to the extent possible, modify its program to comply with the recommendations of the local jurisdiction or the department of general administration.

(3) State agencies sharing a common location may develop and implement a joint commute trip reduction program or may delegate the development and implementation of the commute trip reduction program to the department of general administration.

(4) The department of general administration in consultation with the state technical assistance team shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the team will work with the agency to modify the program as necessary.

(5) For each agency subject to the state agency commute trip reduction plan, the department of general administration in consultation with the technical assistance team shall annually review progress toward meeting the applicable commute trip reduction goals. If it appears an agency is not meeting or is not likely to meet the applicable commute trip reduction goals, the team shall work with the agency to make modifications to the commute trip reduction program.

(6) The department of general administration shall submit an annual progress report for state agencies subject to the state agency commute trip reduction plan to the commute trip reduction task force established under RCW 70.94.537. The report shall be due April 1, 1993, and each April 1st through 2006. The report shall report progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force. [1997 c 250 § 6; 1996 c 186 § 516; 1991 c 202 § 19.]

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

**Captions not law—Effective date—Severability—1991 c 202:** See notes following RCW 47.50.010.

*State vehicle parking account:* RCW 43.01.225.

**70.94.630 Sulfur dioxide abatement account—Coal-fired thermal electric generation facilities—Application—Determination and assessment of progress—Certification of pollution level—Reimbursement—Time limit for and extension of account.** (1) The sulfur dioxide abatement account is created. All receipts from subsection (2) of this section must be deposited in the account. Expenditures in the account may be used only for the purposes of subsection (3) of this section. Only the director of revenue or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Upon application by the owners of a generation facility, the department of ecology shall make a determination of whether the owners are making initial progress in the construction of air pollution control facilities. Evidence of initial progress may include, but is not limited to, engineering work, agreements to proceed with construction, contracts to purchase, or contracts for construction of air pollution control facilities. However, if the owners' progress is impeded due to actions caused by regulatory delays or by defensive litigation, certification of initial progress may not be withheld.

Upon certification of initial progress by the department of ecology and after January 1, 1999, an amount equal to all sales and use taxes paid under chapters 82.08, 82.12, and 82.14 RCW, that were obtained from the sales of coal to, or use of coal by, a business for use at a generation facility shall be deposited in the account under RCW 82.32.392.

By June 1st of each year during construction of the air pollution control facilities and during the verification period required in RCW 82.08.811(2)(d) and 82.12.811(2)(d), the department of ecology shall make an assessment regarding the continued progress of the pollution control facilities. Evidence of continued progress may include, but is not limited to, acquisition of construction material, visible progress on construction, or other actions that have occurred that would verify progress under general construction time tables. The treasurer shall continue to deposit an amount equal to the tax revenues to the sulfur dioxide abatement account unless the department of ecology fails to certify that reasonable progress has been made during the previous year. The operator of a generation facility shall file documentation accompanying its combined monthly excise tax return that identifies all sales and use tax payments made by the owners for coal used at the generation facility during the reporting period.

(3) When a generation facility emits no more than ten thousand tons of sulfur dioxide during a consecutive twelve-month period, the department of ecology shall certify this to the department of revenue and the state treasurer by the end of the following month. Within thirty days of receipt of certification under this subsection, the department of revenue shall approve the tax exemption application and the director or the director's designee shall authorize the release of any moneys in the sulfur dioxide abatement account to the operator of the generation facility. The operator shall

disburse the payment among the owners of record according to the terms of their contractual agreement.

(4)(a) If the department of revenue has not approved a tax exemption under RCW 82.08.811 and 82.12.811 by March 1, 2005, any moneys in the sulfur dioxide abatement account shall be transferred to the general fund and the appropriate local governments in accordance with chapter 82.14 RCW, and the sulfur dioxide abatement account shall cease to exist after March 1, 2005.

(b) The dates in (a) of this subsection must be extended if the owners of a generation facility have experienced difficulties in complying with this section, or RCW 82.08.811, 82.08.812, 82.12.811, 82.12.812, and 82.32.392, due to actions caused by regulatory delays or by defensive litigation.

(5) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975. [1997 c 368 § 10.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**70.94.743 Outdoor burning—Areas where prohibited—Use for management of storm or flood-related debris—Silvicultural burning.** (1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical:

(a) Outdoor burning shall not be allowed in any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning.

(b) Outdoor burning shall not be allowed in any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available. In no event shall such burning be allowed after December 31, 2000.

(c) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70.94.660 or 70.94.755. If outdoor burning is allowed in areas subject to (a) or (b) of this subsection, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and restrictions pursuant to RCW 70.94.750(1) and 70.94.775 apply to outdoor burning allowed under this section.

(2) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container

without providing for the control of combustion or the control of emissions from the combustion.

(3) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. [1997 c 225 § 1; 1991 c 199 § 402.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**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 70.94.743 through 70.94.765. [1997 c 225 § 2; 1972 ex.s. c 136 § 4.]

## Chapter 70.95

### SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

#### Sections

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*Commercial fertilizer: Chapter 15.54 RCW.*

**70.95.030 Definitions.** As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Committee" means the state solid waste advisory committee.
- (4) "Department" means the department of ecology.
- (5) "Director" means the director of the department of ecology.
- (6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.
- (7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.
- (8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.
- (9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

(10) "Jurisdictional health department" means city, county, city-county, or district public health department.

(11) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(12) "Local government" means a city, town, or county.

(13) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.

(14) "Multiple family residence" means any structure housing two or more dwelling units.

(15) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(16) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(17) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(18) "Residence" means the regular dwelling place of an individual or individuals.

(19) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

(20) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(21) "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 solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(22) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(23) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(24) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials. [1997 c 213 § 1; 1992 c 174 § 16; 1991 c 298 § 2; 1989 c 431 § 2;

1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

**Finding—1991 c 298:** "The legislature finds that curbside recycling services should be provided in multiple family residences. The county and city comprehensive solid waste management plans should include provisions for such service." [1991 c 298 § 1.]

*Solid waste disposal—Powers and duties of state board of health as to environmental contaminants:* RCW 43.20.050.

**70.95.055 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 22.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**70.95.170 Permit for solid waste handling facility—Required.** After approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified 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 or 70.95.190. [1997 c 213 § 2; 1969 ex.s. c 134 § 17.]

**70.95.180 Permit for solid waste handling facility—Applications, fee.** (1) Applications for permits to operate a new or modified solid waste handling facility shall be on forms prescribed by the department and shall contain a description of the proposed 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 or modify a solid waste handling facility, the jurisdictional health department shall refer one copy of the application to the department 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 a proposed or modified site and facilities meet all solid waste, air, and other 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. [1997 c 213 § 3; 1988 c 127 § 30; 1969 ex.s. c 134 § 18.]



**70.95.190 Permit for solid waste handling facility—Renewal—Appeal—Validity of renewal—Review fees.** (1) Every permit for an existing solid waste handling facility shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. 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. [1997 c 213 § 4; 1984 c 123 § 9; 1969 ex.s. c 134 § 19.]

**70.95.240 Unlawful to dump or deposit solid waste without permit—Penalties.** (1) 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. This section shall not:

(a) 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; or

(b) Apply to a person using a material or materials on the land as commercial fertilizer if (i) the department of ecology has issued written approval for the use of the material or materials as commercial fertilizer as provided in RCW 70.95.830, (ii) the registration of the material or materials as a packaged commercial fertilizer has not been canceled under RCW 15.54.335, and (iii) the distribution of the material or materials as a commercial fertilizer has not been prohibited by the department of agriculture under RCW 15.54.335.

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with

prior permission of the legal owner or, in the case of public property, of the agency managing the property. [1997 c 427 § 4; 1993 c 292 § 3; 1969 ex.s. c 134 § 24.]

**70.95.830 Commercial fertilizers—Byproducts from manufacturing wood products—Optional review procedure—Legislative intent.** (1) The legislature finds that an optional procedure should be established that provides certainty as to whether certain materials generated as byproducts from the manufacturing of wood products may clearly be distributed and used as commercial fertilizer. It is the intent of the legislature in establishing such a procedure that it be truly optional, and that the procedure or the legislature's establishment of the procedure not be construed, except as provided in subsection (3) of this section, as suggesting in any manner whatsoever that a material submitted or not submitted for approval under the procedure or generated or not generated as a byproduct from the manufacturing of wood products is or is not to be regulated as a solid waste.

(2) If a person desires to receive the express approval of the department of ecology to distribute a material generated as a byproduct from the manufacturing of wood products as a commercial fertilizer under chapter 15.54 RCW for use as a commercial fertilizer, the person may request in writing the department to provide such approval. The department shall issue written approval to the person and to the department of agriculture that the material may be used as a commercial fertilizer, if the material characteristics and management methods will not pose unacceptable hazards to human health and the environment. The written approval shall certify, to the extent practicable, that the use of the material as a commercial fertilizer is consistent with the following:

- (a) The biosolids standards set forth in rule or guidance under chapter 70.95J RCW, municipal sewage sludge;
- (b) Chapter 70.105D RCW, model toxics control act;
- (c) Chapter 90.48 RCW, water pollution control;
- (d) Chapter 70.94 RCW, Washington clean air act;
- (e) Chapter 70.105 RCW, hazardous waste management act; and
- (f) Other factors intended to protect human health and the environment.

(3) A material generated as a byproduct from the manufacturing of wood products that is approved by the department under this section for use as commercial fertilizer and that is distributed and used as such shall not be regulated as solid waste.

(4) A party aggrieved by a decision of the department to issue a written approval under this section or to deny the issuance of such an approval may appeal the decision to the pollution control hearings board within thirty days of the decision. Review of such a decision shall be conducted in accordance with chapter 43.21B RCW. Any subsequent appeal of a decision of the hearings board shall be obtained in accordance with RCW 43.21B.180. [1997 c 427 § 5.]

## Chapter 70.95B

### DOMESTIC WASTE TREATMENT PLANTS— OPERATORS

## Sections

70.95B.115 Licenses or certificates—Suspension for noncompliance with support order—Reissuance.

**70.95B.115 Licenses or certificates—Suspension for noncompliance with support order—Reissuance.** The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 876.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 70.95D

### SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

## Sections

70.95D.040 Certification process—Suspension of license or certificate for noncompliance with support order.

**70.95D.040 Certification process—Suspension of license or certificate for noncompliance with support order.** (1) The department shall establish a process to certify incinerator and landfill operators. To the greatest extent possible, the department shall rely on the certification standards and procedures developed by national organizations and the federal government.

(2) Operators shall be certified if they:

- (a) Attend the required training sessions;
- (b) Successfully complete required examinations; and
- (c) Pay the prescribed fee.

(3) By January 1, 1991, the department shall adopt rules to require incinerator and appropriate landfill operators to:

- (a) Attend a training session concerning the operation of the relevant type of landfill or incinerator;
- (b) Demonstrate sufficient skill and competency for proper operation of the incinerator or landfill by successfully completing an examination prepared by the department; and
- (c) Renew the certificate of competency at reasonable intervals established by the department.

(4) The department shall provide for the collection of fees for the issuance and renewal of certificates. These fees shall be sufficient to recover the costs of the certification program.

(5) The department shall establish an appeals process for the denial or revocation of a certificate.

(6) The department shall establish a process to automatically certify operators who have received comparable certification from another state, the federal government, a local government, or a professional association.

(7) Upon July 23, 1989, and prior to January 1, 1992, the owner or operator of an incinerator or landfill may apply to the department for interim certification. Operators shall receive interim certification if they:

(a) Have received training provided by a recognized national organization, educational institution, or the federal government that is acceptable to the department; or

(b) Have received individualized training in a manner approved by the department; and

(c) Have successfully completed any required examinations.

(8) No interim certification shall be valid after January 1, 1992, and interim certification shall not automatically qualify operators for certification pursuant to subsections (2) through (4) of this section.

(9) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 875; 1989 c 431 § 68.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 70.95J

### MUNICIPAL SEWAGE SLUDGE—BIOSOLIDS

## Sections

70.95J.025 Biosolids permits—Fees—Biosolids permit account—Report.

**70.95J.025 Biosolids permits—Fees—Biosolids permit account—Report.** (1) The department shall establish annual fees to collect expenses for issuing and administering biosolids permits under this chapter. An initial fee schedule shall be established by rule and shall be adjusted no more often than once every two years. This fee schedule applies to all permits, regardless of date of issuance, and fees shall be assessed prospectively. Fees shall be established in amounts to recover expenses incurred by the department in processing permit applications and modifications, reviewing related plans and documents, monitoring, evaluating, con-

ducting inspections, overseeing performance of delegated program elements, providing technical assistance and supporting overhead expenses that are directly related to these activities.

(2) The annual fee paid by a permittee for any permit issued under this chapter shall be determined by the number of residences or residential equivalents contributing to the permittee's biosolids management system. If residences or residential equivalents cannot be determined or reasonably estimated, fees shall be based on other appropriate criteria.

(3) The biosolids permit account is created in the state treasury. All receipts from fees under this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of administering permits under this chapter.

(4) The department shall present a biennial progress report on the use of moneys from the biosolids permit account to the legislature. The first report is due on or before December 31, 1998, and thereafter on or before December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(5) The department shall work with the regulated community and local health departments to study the feasibility of modifying the fee schedule to support delegated local health departments and reduce local health department fees paid by biosolids permittees. [1997 c 398 § 1.]

### Chapter 70.96A

#### TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

##### Sections

70.96A.520 Chemical dependency treatment expenditures—  
Prioritization—Report.

**70.96A.520 Chemical dependency treatment expenditures—Prioritization—Report.** The department shall prioritize expenditures for treatment provided under RCW 13.40.165. The department shall provide funds for inpatient and outpatient treatment providers that are the most successful, using the standards developed by the University of Washington under section 27, chapter 338, Laws of 1997. The department may consider variations between the nature of the programs provided and clients served but must provide funds first for those programs that demonstrate the greatest success in treatment within categories of treatment and the nature of the persons receiving treatment.

The department shall, not later than January 1st of each year, provide a report to the governor and the legislature on the success rates of programs funded under this section. [1997 c 338 § 28.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060

### Chapter 70.105

#### HAZARDOUS WASTE MANAGEMENT

##### Sections

70.105.025 Environmental excellence program agreements—Effect on chapter.

**70.105.025 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 23.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

### Chapter 70.105D

#### HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

##### Sections

70.105D.020 Definitions.  
70.105D.030 Department's powers and duties.  
70.105D.040 Standard of liability—Settlement.  
70.105D.070 Toxics control accounts.  
70.105D.080 Private right of action—Remedial action costs.

**70.105D.020 Definitions.** (1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

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

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to

or possession of a facility securing a loan or other obligation.

(7) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(8) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(9) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(10) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(11) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b)

operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(12) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (13)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release;

or

(iii) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of ground water does not disqualify a person from the exemption in this subsection (12)(b)(iii).

The exemption in (b)(ii) of this subsection does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release.

(13) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(14) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(15) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(16) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(17) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (12)(b)(ii) of this section.

(18) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(19) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropri-

ate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(20) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(23) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(24) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower. [1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

**Findings—Intent—1997 c 406:** "The legislature finds that:

(1) Engrossed Substitute House Bill No. 1810 enacted during the 1995 legislative session [1995 c 359] authorized establishment of the model toxics control act policy advisory committee, a twenty-two member committee representing a broad range of interests including the legislature, agriculture, large and small business, environmental organizations, and local and state government. The committee was charged with the task of providing advice to the legislature and the department of ecology to more effectively implement the model toxics control act, chapter 70.105D RCW.

(2) The committee members committed considerable time and effort to their charge, meeting twenty-six times during 1995 and 1996 to discuss and decide issues. In addition, the committee created four subcommittees that met over sixty times during this same period. There were also numerous working subgroups and drafting committees formed on an ad hoc basis to support the committee's work. Many members of the public also attended these meetings and were provided opportunities to contribute to the committee deliberations.

(3) The policy advisory committee completed its work and submitted a final report to the department of ecology and the legislature on December 15, 1996. That report contains numerous recommendations for statutory changes that were agreed to by consensus of the committee members or obtained broad support of most of the committee members. Chapter 406, Laws of 1997 is intended to implement those recommended statutory changes." [1997 c 406 § 1.]

### **70.105D.030 Department's powers and duties.** (1)

The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020(7) and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, deed restrictions where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction under this subsection, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to a deed restriction;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(12)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) the establishment of regional citizen's advisory committees, (ii) public notice of the development of investigative plans or remedial plans for releases or threatened releases, and (iii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020(7) and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites. [1997 c 406 § 3; 1995 c 70 § 2. Prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

**Findings—Intent—1997 c 406:** See note following RCW 70.105D.020.

**Severability—1994 c 257:** See note following RCW 36.70A.270.



**70.105D.040 Standard of liability—Settlement.** (1)

Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

- (a) The owner or operator of the facility;
- (b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;
- (c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;
- (d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and
- (e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (i) An act of God;
- (ii) An act of war; or
- (iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose.

(6) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or

the department affects any person's right to obtain a remedy under common law or other statutes. [1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

**Findings—Intent—1997 c 406:** See note following RCW 70.105D.020.

**70.105D.070 Toxics control accounts.** (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local

governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; and (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance. [1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

**Findings—Intent—1997 c 406:** See note following RCW 70.105D.020.

**Finding—Effective date—1994 c 252:** See notes following RCW 70.119A.020.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240

**70.105D.080 Private right of action—Remedial action costs.** Except as provided in RCW 70.105D.040(4) (d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the

rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively. [1997 c 406 § 6; 1993 c 326 § 1.]

**Findings—Intent—1997 c 406:** See note following RCW 70.105D.020.

**Effective date—1993 c 326:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 326 § 2.]

**Severability—1993 c 326:** "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." [1993 c 326 § 3.]

## Chapter 70.118

### ON-SITE SEWAGE DISPOSAL SYSTEMS

#### Sections

70.118.100 Alternative systems—Technical review committee.

70.118.110 Alternative systems—State guidelines and standards.

**70.118.100 Alternative systems—Technical review committee.** The department of health must include one person who is familiar with the operation and maintenance of certified proprietary devices on the technical review committee responsible for evaluating and making recommendations to the department of health regarding the general use of alternative on-site sewage systems in the state. [1997 c 447 § 3.]

**Finding—Purpose—Construction—1997 c 447:** See notes following RCW 70.05.074.

**70.118.110 Alternative systems—State guidelines and standards.** In order to assure that technical guidelines and standards keep pace with advancing technologies, the department of health in collaboration with the technical review committee, local health departments, and other interested parties, must review and update as appropriate, the state guidelines and standards for alternative on-site sewage disposal every three years. The first review and update must be completed by January 1, 1999. [1997 c 447 § 5.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

## Chapter 70.119

### PUBLIC WATER SUPPLY SYSTEMS—OPERATORS

#### Sections

70.119.030 Certified operators required for certain public water systems

**70.119.030 Certified operators required for certain public water systems.** (1) A public water system shall have a certified operator if:

(a) It is a group A water system; or

(b) It is a public water system using a surface water source or a ground water source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a 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.

(3) A certified operator may provide required services to more than one system or to a group of systems. The amount of time that a certified operator shall be required to be present at any given system shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) The department shall, in establishing by rule or otherwise the requirements for public water systems with fewer than one hundred connections, phase in such requirements in order to assure that (a) an adequate number of certified operators are available to serve the additional systems, (b) the systems have adequate notice and time to plan for securing the services of a certified operator, (c) the department has the additional data and other administrative capacity, (d) adequate training is available to certify additional operators as necessary, and (e) any additional requirements under federal law are satisfied. The department shall require certified operators for all group A systems as necessary to conform to federal law or implementing rules or guidelines. Unless necessary to conform to federal law, rules, or guidelines, the department shall not require a certified operator for a system with fewer than one hundred connections unless that system is determined by the department to be in significant noncompliance with operational, monitoring, or water quality standards that would put the public health at risk, as defined by the department by rule, or has, or is required to have, water treatment facilities other than simple disinfection.

(5) Any examination required by the department as a prerequisite for the issuance of a certificate under this chapter shall be offered in each region where the department has a regional office.

(6) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1997 c 218 § 2; 1995 c 376 § 6; 1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

**Findings—1997 c 218:** "The legislature finds and declares that:

(1) The provision of safe and reliable water supplies to the people of the state of Washington is fundamental to ensuring public health and continuing economic vitality of this state.

(2) The department of health, pursuant to legislative directive in 1995, has provided a report that incorporates the findings and recommendations of the water supply advisory committee as to progress in meeting the objectives of the public health improvement plan, changes warranted by the recent congressional action reauthorizing the federal safe drinking water act,

and new approaches to providing services under the general principles of regulatory reform.

(3) The environmental protection agency has recently completed a national assessment of public water system capital needs, which has identified over four billion dollars in such needs in the state of Washington.

(4) The changes to the safe drinking water act offer the opportunity for the increased ability of the state to tailor federal requirements and programs to meet the conditions and objectives within this state.

(5) The department of health and local governments should be provided with adequate authority, flexibility, and resources to be able to implement the principles and recommendations adopted by the water supply advisory committee.

(6) Statutory changes are necessary to eliminate ambiguity or conflicting authorities, provide additional information and tools to consumers and the public, and make necessary changes to be consistent with federal law.

(7) A basic element to the protection of the public's health from waterborne disease outbreaks is systematic and comprehensive monitoring of water supplies for all contaminants, including hazardous substances with long-term health effects, and routine field visits to water systems for technical assistance and evaluation.

(8) The water systems of this state should have prompt and full access to the newly created federal state revolving fund program to help meet their financial needs and to achieve and maintain the technical, managerial, and financial capacity necessary for long-term compliance with state and federal regulations. This requires authority for streamlined program administration and the provision of the necessary state funds required to match the available federal funds.

(9) Stable, predictable, and adequate funding is essential to a state-wide drinking water program that meets state public health objectives and provides the necessary state resources to utilize the new flexibility, opportunities, and programs under the safe drinking water act." [1997 c 218 § 1.]

**Effective date—1997 c 218:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 25, 1997]." [1997 c 218 § 6.]

**Findings—1995 c 376:** See note following RCW 70.116.060.

## Chapter 70.119A

### PUBLIC WATER SYSTEMS—PENALTIES AND COMPLIANCE

#### Sections

|             |   |
|-------------|---|
| 70.119A.025 | Environmental excellence program agreements—Effect on chapter.  |
| 70.119A.115 | ● Organic and inorganic chemicals—Area-wide waiver program.   |
| 70.119A.170 | Drinking water assistance account—Program to provide financial assistance to public water systems—Responsibilities. |

**70.119A.025 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 24.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**70.119A.115 Organic and inorganic chemicals—Area-wide waiver program.** The department shall develop and implement a voluntary consolidated source monitoring program sufficient to accurately characterize the source water quality of the state's drinking water supplies and to maximize the flexibility allowed in the federal safe drinking water act to allow public water systems to be waived from full

testing requirements for organic and inorganic chemicals under the federal safe drinking water act. The department shall arrange for the initial sampling and provide for testing and programmatic costs to the extent that the legislature provides funding for this purpose in water system operating permit fees or through specific appropriation of funds from other sources. The department shall assess a fee using its authority under RCW 43.20B.020, sufficient to cover all testing and directly related costs to public water systems that otherwise are not funded. The department shall adjust the amount of the fee based on the size of the public drinking water system. Fees charged by the department for this purpose may not vary by more than a factor of ten. The department shall, to the extent feasible and cost-effective, use the services of local governments, local health departments, and private laboratories to implement the testing program. The department shall consult with the departments of agriculture and ecology for the purpose of exchanging water quality and other information. [1997 c 218 § 3; 1994 c 252 § 3.]

**Findings—Effective date—1997 c 218:** See notes following RCW 70.119.030.

**Finding—Effective date—1994 c 252:** See notes following RCW 70.119A.020.

**70.119A.170 Drinking water assistance account—Program to provide financial assistance to public water systems—Responsibilities.** (1) A drinking water assistance account is created in the state treasury. Such subaccounts as are necessary to carry out the purposes of this chapter are permitted to be established within the account. The purpose of the account is to allow the state to use any federal funds that become available to states from congress to fund a state revolving loan fund program as part of the reauthorization of the federal safe drinking water act. Expenditures from the account may only be made by the secretary, the public works board, or the department of community, trade, and economic development, after appropriation. Moneys in the account may only be used, consistent with federal law, to assist water systems to provide safe drinking water through a program administered through the department of health, the public works board, and the department of community, trade, and economic development and for other activities authorized under federal law. Money may be placed in the account from the proceeds of bonds when authorized by the legislature, transfers from other state funds or accounts, federal capitalization grants or other financial assistance, all repayments of moneys borrowed from the account, all interest payments made by borrowers from the account or otherwise earned on the account, or any other lawful source. All interest earned on moneys deposited in the account, including repayments, shall remain in the account and may be used for any eligible purpose. Moneys in the account may only be used to assist local governments and water systems to provide safe and reliable drinking water, for other services and assistance authorized by federal law to be funded from these federal funds, and to administer the program.

(2) The department and the public works board shall establish and maintain a program to use the moneys in the drinking water assistance account as provided by the federal

government under the safe drinking water act. The department and the public works board, in consultation with purveyors, local governments, local health jurisdictions, financial institutions, commercial construction interests, other state agencies, and other affected and interested parties, shall by January 1, 1999, adopt final joint rules and requirements for the provision of financial assistance to public water systems as authorized under federal law. Prior to the effective date of the final rules, the department and the public works board may establish and utilize guidelines for the sole purpose of ensuring the timely procurement of financial assistance from the federal government under the safe drinking water act, but such guidelines shall be converted to rules by January 1, 1999. The department and the public works board shall make every reasonable effort to ensure the state's receipt and disbursement of federal funds to eligible public water systems as quickly as possible after the federal government has made them available. By December 15, 1997, the department and the public works board shall provide a report to the appropriate committees of the legislature reflecting the input from the affected interests and parties on the status of the program. The report shall include significant issues and concerns, the status of rule making and guidelines, and a plan for the adoption of final rules.

(3) If the department, public works board, or any other department, agency, board, or commission of state government participates in providing service under this section, the administering entity shall endeavor to provide cost-effective and timely services. Mechanisms to provide cost-effective and timely services include: (a) Adopting federal guidelines by reference into administrative rules; (b) using existing management mechanisms rather than creating new administrative structures; (c) investigating the use of service contracts, either with other governmental entities or with nongovernmental service providers; (d) the use of joint or combined financial assistance applications; and (e) any other method or practice designed to streamline and expedite the delivery of services and financial assistance.

(4) The department shall have the authority to establish assistance priorities and carry out oversight and related activities, other than financial administration, with respect to assistance provided with federal funds. The department, the public works board, and the department of community, trade, and economic development shall jointly develop, with the assistance of water purveyors and other affected and interested parties, a memorandum of understanding setting forth responsibilities and duties for each of the parties. The memorandum of understanding at a minimum, shall include:

(a) Responsibility for developing guidelines for providing assistance to public water systems and related oversight prioritization and oversight responsibilities including requirements for prioritization of loans or other financial assistance to public water systems;

(b) Department submittal of preapplication information to the public works board for review and comment;

(c) Department submittal of a prioritized list of projects to the public works board for determination of:

(i) Financial capability of the applicant; and

(ii) Readiness to proceed, or the ability of the applicant to promptly commence the project;

(d) A process for determining consistency with existing water resource planning and management, including coordinated water supply plans, regional water resource plans, and comprehensive plans under the growth management act, chapter 36.70A RCW;

(e) A determination of:

(i) Least-cost solutions, including consolidation and restructuring of small systems, where appropriate, into more economical units;

(ii) The provision of regional facilities;

(iii) Projects and activities that facilitate compliance with the federal safe drinking water act; and

(iv) Projects and activities that are intended to achieve the public health objectives of federal and state drinking water laws;

(f) Implementation of water conservation and other demand management measures consistent with state guidelines for water utilities;

(g) Assistance for the necessary planning and engineering to assure that consistency, coordination, and proper professional review are incorporated into projects or activities proposed for funding;

(h) Minimum standards for water system capacity, financial viability, and water system planning;

(i) Testing and evaluation of the water quality of the state's public water system to assure that priority for financial assistance is provided to systems and areas with threats to public health from contaminated supplies and reduce in appropriate cases the substantial increases in costs and rates that customers of small systems would otherwise incur under the monitoring and testing requirements of the federal safe drinking water act;

(j) Coordination, to the maximum extent possible, with other state programs that provide financial assistance to public water systems and state programs that address existing or potential water quality or drinking contamination problems;

(k) Definitions of "affordability" and "disadvantaged community" that are consistent with these and similar terms in use by other state or federal assistance programs;

(1) Criteria for the financial assistance program for public water systems, which shall include, but are not limited to:

(i) Determining projects addressing the most serious risk to human health;

(ii) Determining the capacity of the system to effectively manage its resources, including meeting state financial viability criteria; and

(iii) Determining the relative benefit to the community served; and

(m) Ensure that each agency fulfills the audit, accounting, and reporting requirements under federal law for its portion of the administration of this program.

(5) The department and the public works board shall begin the process to disburse funds no later than October 1, 1997, and shall adopt such rules as are necessary under chapter 34.05 RCW to administer the program by January 1, 1999. [1997 c 218 § 4; 1995 c 376 § 10.]

**Findings—Effective date—1997 c 218:** See notes following RCW 70.119.030.

**Findings—1995 c 376:** See note following RCW 70.116.060.

## Chapter 70.123

### SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

#### Sections

70.123.100 Funding for shelters.

70.123.110 Assistance to families in shelters.

**70.123.100 Funding for shelters.** 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. [1997 c 160 § 1; 1979 ex.s. c 245 § 10.]

**70.123.110 Assistance to families in shelters.** General assistance or temporary assistance for needy families 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. [1997 c 59 § 9; 1979 ex.s. c 245 § 11.]

## Chapter 70.124

### ABUSE OF PATIENTS—NURSING HOMES, STATE HOSPITALS

#### Sections

70.124.020 Definitions.

70.124.040 Reports to department or law enforcement agency—Action required. (*Effective until January 1, 1998.*)

70.124.040 Reports to department or law enforcement agency—Action required. (*Effective January 1, 1998.*)

70.124.070 Failure to report is gross misdemeanor.

70.124.100 Retaliation against whistleblowers and residents—Remedies—Rules.

**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 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 podiatric medicine and surgery, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathic medicine 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 nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a nursing home or state hospital patient under circumstances which indicate that the patient's health, welfare, or 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, or safety.

(11) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW. [1997 c 392 § 519; 1996 c 178 § 24; 1981 c 174 § 2; 1979 ex.s. c 228 § 2.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Effective date—1996 c 178:** See note following RCW 18.35.110.

**70.124.040 Reports to department or law enforcement agency—Action required. (Effective until January 1, 1998.)** (1) Where a report is required 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 or state hospital patient;
- (c) The name and address of the 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 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, including

the medicaid fraud control unit of the office of the attorney general, 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. [1997 c 392 § 520; 1981 c 174 § 4; 1979 ex.s. c 228 § 4.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.124.040 Reports to department or law enforcement agency—Action required. (Effective January 1, 1998.)** (1) Where a report is required 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 or state hospital patient;
- (c) The name and address of the patient's relatives having responsibility for the patient;
- (d) The nature and extent of the alleged injury or injuries;
- (e) The nature and extent of the alleged neglect;
- (f) The nature and extent of the alleged 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 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, including the medicaid fraud control unit of the office of the attorney general, 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. [1997 c 392 § 520; 1997 c 386 § 30; 1981 c 174 § 4; 1979 ex.s. c 228 § 4.]

**Reviser's note:** This section was amended by 1997 c 386 § 30 and by 1997 c 392 § 520, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**70.124.070 Failure to report is gross 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 gross misdemeanor. [1997 c 392 § 521; 1979 ex.s. c 228 § 7.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.124.100 Retaliation against whistleblowers and residents—Remedies—Rules.** (1) An employee who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, financial exploitation, or abandonment by any person in a nursing home, state hospital, or adult family home may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to discharge a resident from a nursing home, state hospital, adult family home, or any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint substantiated by the department has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a functional assessment conducted by the department that shows that the resident's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or employee of a nursing home, state hospital, or adult family home, or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, exploitation, or abandonment to the department or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a nursing home, state hospital, or adult family home from exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a nursing home, state hospital, or adult family home from: (a) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (b) for facilities with six or fewer residents, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases where a whistleblower has been terminated or had hours of employment reduced due to the inability of a facility to meet payroll.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6) No frail elder or vulnerable person who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected, nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person.

(7) The department shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1997 c 392 § 201.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009

## Chapter 70.128 ADULT FAMILY HOMES

### Sections

- 70.128.061 Moratorium on authorization of adult family home licenses.  
70.128.062 Rule-making authority to implement RCW 70.128.061.  
70.128.175 Definitions.

**70.128.061 Moratorium on authorization of adult family home licenses.** The department of social and health services shall implement a limited moratorium on the authorization of adult family home licenses until December 12, 1997, or until the secretary has determined that all adult family home and group home safety and quality of care standards have been reviewed by the department, determined by the secretary to reasonably protect the life, safety, and health of residents, and has notified all adult family home and group home operators of the standards of care or any modifications to the existing standards. This limited moratorium shall in no way prevent a person eligible to receive services from receiving the same or equivalent chronic long-term care services. In the event of a need for such services, the department shall develop a process for determining the availability of chronic long-term care residential services on a case-by-case basis to determine if an adult family home license should be granted to accommodate the needs of a particular geographical or ethnic community. The

department may review the cost and feasibility of creating an adult family home advisory committee. The secretary shall make the final determination on individual case licensure until December 12, 1997, or until the moratorium has been removed and determine if an adult family home advisory committee should be developed. [1997 c 392 § 402.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.128.062 Rule-making authority to implement RCW 70.128.061.** The department of social and health services is authorized to adopt rules, including emergency rules, for implementing the provisions of RCW 70.128.061. [1997 c 392 § 403.]

**Effective date—1997 c 392 § 403:** "Section 403 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 1997]." [1997 c 392 § 532.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.128.175 Definitions.** (1) Unless the context clearly requires otherwise, these definitions shall apply throughout this section and RCW 35.63.140, 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

(a) "Adult family home" means a regular family abode in which a person or persons provides personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(b) "Residential care facility" means a facility that cares for at least five, but not more than fifteen functionally disabled persons, that is not licensed pursuant to chapter 70.128 RCW.

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

(2) An adult family home shall be considered a residential use of property for zoning and public and private utility rate purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings. [1997 c 392 § 401; 1995 1st sp.s. c 18 § 29; 1989 1st ex.s. c 9 § 815.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

## Chapter 70.129

### LONG-TERM CARE RESIDENT RIGHTS

#### Sections

- 70.129.010 Definitions
- 70.129.030 Notice of rights and services. (*Effective January 1, 1998.*)
- 70.129.105 Waiver of liability and resident rights limited.
- 70.129.110 Disclosure, transfer, and discharge requirements.
- 70.129.150 Disclosure of fees and notice requirements—Deposits

**70.129.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of state government responsible for licensing the provider in question.

(2) "Facility" means a long-term care facility.

(3) "Long-term care facility" means a facility that is licensed or required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

(4) "Resident" means the individual receiving services in a long-term care facility, that resident's attorney in fact, guardian, or other legal representative acting within the scope of their authority.

(5) "Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

(6) "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

(7) "Representative" means a person appointed under RCW 7.70.065.

(8) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [1997 c 392 § 203; 1994 c 214 § 2.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.030 Notice of rights and services. (*Effective January 1, 1998.*)** (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility must inform each resident in writing before, or at the time of admission, and at least once every twenty-four months thereafter of: (a) Services available in the facility; (b) charges for those services including charges for services not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of operations required under RCW 70.129.140(2).

(4) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombudsmen program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

(5) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them. [1997 c 386 § 31; 1994 c 214 § 4.]

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**70.129.105 Waiver of liability and resident rights limited.** No long-term care facility or nursing facility licensed under chapter 18.51 RCW shall require or request residents to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of residents' rights set forth in this chapter or in the applicable licensing or certification laws. [1997 c 392 § 211; 1994 c 214 § 17.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.110 Disclosure, transfer, and discharge requirements.** (1) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(2) All long-term care facilities shall fully disclose to potential residents or their legal representative the service capabilities of the facility prior to admission to the facility. If the care needs of the applicant who is medicaid eligible are in excess of the facility's service capabilities, the

department shall identify other care settings or residential care options consistent with federal law.

(3) Before a long-term care facility transfers or discharges a resident, the facility must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(4)(a) Except when specified in this subsection, the notice of transfer or discharge required under subsection (3) of this section must be made by the facility at least thirty days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

(i) The safety of individuals in the facility would be endangered;

(ii) The health of individuals in the facility would be endangered;

(iii) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) A resident has not resided in the facility for thirty days.

(5) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the developmental disabilities assistance and bill of rights act; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the protection and advocacy for mentally ill individuals act.

(6) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of a gender-appropriate bed in the facility. [1997 c 392 § 205; 1994 c 214 § 12.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.150 Disclosure of fees and notice requirements—Deposits.** (1) Prior to admission, all long-term care facilities or nursing facilities licensed under chapter 18.51

RCW that require payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission to the long-term care facility or nursing facility, shall provide the resident, or his or her representative, full disclosure in writing in a language the resident or his or her representative understands, a statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees. The facility shall also disclose to the person, or his or her representative, the facility's advance notice or transfer requirements, prior to admission. In addition, the long-term care facility or nursing facility shall also fully disclose in writing prior to admission what portion of the deposits, admissions fees, prepaid charges, or minimum stay fees will be refunded to the resident or his or her representative if the resident leaves the long-term care facility or nursing facility. Receipt of the disclosures required under this subsection must be acknowledged in writing. If the facility does not provide these disclosures, the deposits, admissions fees, prepaid charges, or minimum stay fees may not be kept by the facility. If a resident dies or is hospitalized or is transferred to another facility for more appropriate care and does not return to the original facility, the facility shall refund any deposit or charges already paid less the facility's per diem rate for the days the resident actually resided or reserved or retained a bed in the facility notwithstanding any minimum stay policy or discharge notice requirements, except that the facility may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private-pay resident's move, not to exceed five days' per diem charges, unless the resident has given advance notice in compliance with the admission agreement. All long-term care facilities or nursing facilities covered under this section are required to refund any and all refunds due the resident or his or her representative within thirty days from the resident's date of discharge from the facility. Nothing in this section applies to provisions in contracts negotiated between a nursing facility or long-term care facility and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(2) Where a long-term care facility or nursing facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract shall be consistent with the requirements of this section, and the terms of an admission contract by a long-term care facility shall be consistent with the requirements of this chapter. [1997 c 392 § 206; 1994 c 214 § 16.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Chapter 70.146**

**WATER POLLUTION CONTROL FACILITIES FINANCING**

Sections

70.146.070 Grants or loans for water pollution control facilities—Considerations.

**70.146.070 Grants or loans for water pollution control facilities—Considerations.** When making grants or loans for water pollution control facilities, the department shall consider the following:

- (1) The protection of water quality and public health;
- (2) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
- (3) Actions required under federal and state permits and compliance orders;
- (4) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
- (5) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and
- (6) The recommendations of the Puget Sound action team and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town that is required or chooses to plan under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan be adopted, or unless it has adopted development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that development regulations be adopted. [1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

**Effective date—1997 c 429 §§ 29 and 30:** See note following RCW 43.155.070.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Section headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**Effective dates—1986 c 3:** See note following RCW 82.24.027.

**Chapter 70.149**

**HEATING OIL POLLUTION LIABILITY PROTECTION ACT**

Sections

70.149.040 Duties of director. *(Expires June 1, 2001.)*

70.149.070 Heating oil pollution liability trust account. *(Expires June 1, 2001.)*

**70.149.040 Duties of director. *(Expires June 1, 2001.)*** The director shall:

- (1) Design a program for providing pollution liability insurance for heating oil tanks that provides sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;
- (2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees

who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance program trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks;

(9) Implement a program to provide advice and technical assistance to owners and operators of active and abandoned heating oil tanks if contamination from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing or site assessment and review of the results of reports. If the director finds that contamination is not present or that the contamination is apparently minor and not a threat to human health or the environment, the director may provide written opinions and conclusions on the results of the investigation to owners and operators of active and abandoned heating oil tanks. The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account. The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance; and

(10) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks. [1997 c 8 § 1; 1995 c 20 § 4.]

**Expiration date—1997 c 8:** "This act expires June 1, 2001." [1997 c 8 § 3.]

**70.149.070 Heating oil pollution liability trust account.** (*Expires June 1, 2001.*) (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70.149.080 and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter

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43.88 RCW, but no appropriation is required for expenditures. Any residue in the account shall be transferred at the end of the biennium to the pollution liability insurance program trust account.

(2) Money in the account may be used by the director for the following purposes:

(a) Corrective action costs;

(b) Third-party liability claims;

(c) Costs associated with claims administration;

(d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and

(e) Administrative expenses of the program, including personnel, equipment, supplies, and providing advice and technical assistance. [1997 c 8 § 2; 1995 c 20 § 7.]

**Expiration date—1997 c 8:** See note following RCW 70.149.040.

## Chapter 70.168

### STATE-WIDE TRAUMA CARE SYSTEM

#### Sections

70.168.040 Emergency medical services and trauma care system trust account. (*Effective January 1, 1998.*)

70.168.135 Grant program for designated trauma care services—Rules. (*Effective January 1, 1998.*)

**70.168.040 Emergency medical services and trauma care system trust account.** (*Effective January 1, 1998.*) The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account from the public safety education account or other sources as appropriated, and as collected under RCW 46.63.110(6) and 46.12.042. Disbursements shall be made by the department subject to legislative appropriation. Expenditures may be made only for the purposes of the state trauma care system under this chapter, including emergency medical services, trauma care services, rehabilitative services, and the planning and development of related services under this chapter and for reimbursement by the department of social and health services for trauma care services provided by designated trauma centers. [1997 c 331 § 2; 1990 c 269 § 17; 1988 c 183 § 4.]

**Effective date—1997 c 331:** See note following RCW 70.168.135.

**70.168.135 Grant program for designated trauma care services—Rules.** (*Effective January 1, 1998.*) The department shall establish by rule a grant program for designated trauma care services. The grants shall be made from the emergency medical services and trauma care system trust account and shall require regional matching funds. The trust account funds and regional match shall be in a seventy-five to twenty-five percent ratio. [1997 c 331 § 1.]

**Effective date—1997 c 331:** "Sections 1 through 8 of this act take effect January 1, 1998." [1997 c 331 § 11.]

## Chapter 70.200

### DONATIONS FOR CHILDREN

## Sections

70.200.010 Definitions.

**70.200.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Distributing organization" means a charitable nonprofit organization under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, or a public health agency acting on behalf of or in conjunction with a charitable nonprofit organization, which distributes children's items to needy persons free of charge and includes any nonprofit organization that distributes children's items free of charge to other nonprofit organizations or the public. A public health agency shall not otherwise be considered a distributing organization for purposes of this chapter when it is carrying out other functions and responsibilities under Title 70 RCW.

(2) "Donor" means a person, corporation, association, or other organization that donates children's items to a distributing organization or a person, corporation, association, or other organization that repairs or updates such donated items to current standards. Donor also includes any person, corporation, association, or other organization which donates any space in which storage or distribution of children's items takes place.

(3) "Children's items" include, but are not limited to, clothes, diapers, food, baby formula, cribs, playpens, car seat restraints, toys, high chairs, and books. [1997 c 40 § 1; 1994 c 25 § 1.]

## Title 71

### MENTAL ILLNESS

#### Chapters

- 71.05** Mental illness.  
**71.12** Private establishments.  
**71.24** Community mental health services act.

#### Chapter 71.05

### MENTAL ILLNESS

## Sections

- 71.05.010 Legislative intent.  
 71.05.012 Legislative intent and finding.  
 71.05.020 Definitions.  
 71.05.040 Detention or judicial commitment of persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia.  
 71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention.  
 71.05.100 Financial responsibility.  
 71.05.110 Compensation of appointed counsel.  
 71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure.  
 71.05.155 Request to mental health professional by law enforcement agency for investigation under RCW 71.05.150—Advisory report of results.  
 71.05.160 Petition for initial detention.  
 71.05.170 Acceptance of petition—Notice—Duty of state hospital.

- 71.05.180 Detention period for evaluation and treatment.  
 71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody.  
 71.05.200 Notice and statement of rights—Probable cause hearing.  
 71.05.210 Evaluation—Treatment and care—Release or other disposition.  
 71.05.215 Right to refuse antipsychotic medicine—Rules.  
 71.05.220 Property of committed person.  
 71.05.230 Procedures for additional treatment.  
 71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing.  
 71.05.260 Release from involuntary intensive treatment—Exception.  
 71.05.270 Temporary release.  
 71.05.280 Additional confinement—Grounds.  
 71.05.285 Additional confinement—Determination of disability.  
 71.05.290 Petition for additional confinement—Affidavit.  
 71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of representative.  
 71.05.320 Remand for additional treatment—Duration—Developmentally disabled—Grounds—Hearing.  
 71.05.330 Early release—Notice to court and prosecuting attorney—Petition for hearing.  
 71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation.  
 71.05.350 Assistance to released persons.  
 71.05.360 Rights of involuntarily detained persons.  
 71.05.370 Rights—Posting of list.  
 71.05.410 Notice of disappearance of patient.  
 71.05.460 Right to counsel.  
 71.05.470 Right to examination.  
 71.05.490 Rights of persons committed before January 1, 1974.  
 71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles.

**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 timely and appropriate 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;
- (7) To protect the public safety. [1997 c 112 § 2; 1989 c 120 § 1; 1973 1st ex.s. c 142 § 6.]

**71.05.012 Legislative intent and finding.** It is the intent of the legislature to enhance continuity of care for persons with serious mental disorders that can be controlled or stabilized in a less restrictive alternative commitment. Within the guidelines stated in *In Re LaBelle* 107 Wn. 2d 196 (1986), the legislature intends to encourage appropriate interventions at a point when there is the best opportunity to restore the person to or maintain satisfactory functioning.

For persons with a prior history or pattern of repeated hospitalizations or law enforcement interventions due to decompensation, the consideration of prior mental history is particularly relevant in determining whether the person would receive, if released, such care as is essential for his or her health or safety.

Therefore, the legislature finds that for persons who are currently under a commitment order, a prior history of decompensation leading to repeated hospitalizations or law enforcement interventions should be given great weight in determining whether a new less restrictive alternative commitment should be ordered. [1997 c 112 § 1.]

**71.05.020 Definitions.** For the purposes of this chapter:

(1) "Antipsychotic medications," also referred to as "neuroleptics," means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders and currently includes phenothiazines, thioxanthenes, butyrophenone, dihydroindolone, and dibenzoxazipine;

(2) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(3) "Custody" means 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;

(4) "Department" means the department of social and health services;

(5) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(6) "Developmental disability" means that condition defined in RCW 71A.10.020(2);

(7) "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 timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(8) "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 or her 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;

(9) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the

individual being assisted as manifested by prior charged criminal conduct;

(10) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(11) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(12) "Likelihood of serious harm" means: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself, (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;

(13) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(14) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(15) "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;

(16) "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;

(17) "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 adopted by the secretary pursuant to the provisions of this chapter;



(18) "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 and is certified or eligible to be certified by the American board of psychiatry and neurology;

(19) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(20) "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;

(21) "Resource management services" has the meaning given in chapter 71.24 RCW;

(22) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(23) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary. [1997 c 112 § 3. Prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

**71.05.040 Detention or judicial commitment of persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia.** Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia 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. [1997 c 112 § 4; 1987 c 439 § 1; 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 or her 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, 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, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, 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 from the time the professional staff determine that an evaluation by the county designated mental health professional is necessary. [1997 c 112 § 5; 1979 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.]

**71.05.100 Financial responsibility.** In addition to the responsibility provided for by RCW 43.20B.330, any person, or his or her estate, or his or her 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 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 or her 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 shall, pursuant to chapter 34.05 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 RCW 43.20B.320 through 43.20B.360 and 43.20B.370. [1997 c 112 § 6; 1987 c 75 § 18; 1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**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 or she 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). [1997 c 112 § 7; 1973 1st ex.s. c 142 § 16.]

**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: (i) Presents a likelihood of serious harm, or (ii) 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, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the county designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility.

(b) Whenever it appears, by petition for initial detention, to the satisfaction of a judge of the superior court that a person presents, as a result of a mental disorder, a likelihood of serious harm, or is gravely disabled, and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily, the judge may issue an order requiring the person to appear within twenty-four hours after service of the order at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period. The order shall state the address of the evaluation and treatment facility to which the person is to report and whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient basis and that if the person named in the order fails to appear at the evaluation and treatment facility at or before the date and time stated in the order, such person may be involuntarily taken into custody for evaluation and treatment. The order shall also designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(c) The mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to appear 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 of outpatient evaluation or admission to the evaluation and treatment facility.

The person shall be permitted to remain in his or her home or other place of his or her choosing prior to the time of evaluation and shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(d) If the person ordered to appear does appear 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 ordered to appear 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 or her to take a person into custody under the provisions of this subsection, he or she 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 or her guardian, and conservator, if any, a copy of the original order 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, 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 or the emergency department of a local hospital:

(a) Only pursuant to subsections (1)(d) and (2) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm 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. [1997 c 112 § 8; 1984 c 233 § 1; 1979 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, the mental health professional shall, if requested to do so, advise the 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. [1997 c 112 § 9; 1979 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 or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she 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. [1997 c 112 § 10; 1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

**71.05.170 Acceptance of petition—Notice—Duty of state hospital.** Whenever the designated county mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, 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.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW. [1997 c 112 § 11; 1989 c 205 § 10; 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 or her 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. [1997 c 112 § 12; 1979 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 or her 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. [1997 c 112 § 13; 1979 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 the person and, if possible, a responsible member of his or her 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 or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself 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 the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a mentally ill person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) That the person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and 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 the person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) That the person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) That the person has the right to refuse medications, including antipsychotic 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 the 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. [1997 c 112 § 14; 1989 c 120 § 5; 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 or her admission, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional as defined in this chapter, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she 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 or her 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 or her professional designee, the person presents a likelihood of serious harm, 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.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

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. [1997 c 112 § 15; 1994 sp.s. c 9 § 747. Prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

**Severability—Headings and captions not law—Effective date—**1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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**Findings—Construction—Conflict with federal requirements—**1991 c 364: See notes following RCW 70.96A.020.

**Severability—1991 c 105:** See note following RCW 71.05.215.

**71.05.215 Right to refuse antipsychotic medicine—Rules.** (1) A person found to be gravely disabled or presents a likelihood of serious harm as a result of a mental disorder has a right to refuse antipsychotic medication unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of that person.

(2) The department shall adopt rules to carry out the purposes of this chapter. These rules shall include:

(a) An attempt to obtain the informed consent of the person prior to administration of antipsychotic medication.

(b) For short-term treatment up to thirty days, the right to refuse antipsychotic medications unless there is an additional concurring medical opinion approving medication.

(c) For continued treatment beyond thirty days through the hearing on any petition filed under RCW 71.05.370(7), the right to periodic review of the decision to medicate by the medical director or designee.

(d) Administration of antipsychotic medication in an emergency and review of this decision within twenty-four hours. An emergency exists if the person presents an imminent likelihood of serious harm, and medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and in the opinion of the physician, the person's condition constitutes an emergency requiring the treatment be instituted prior to obtaining a second medical opinion.

(e) Documentation in the medical record of the physician's attempt to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent. [1997 c 112 § 16; 1991 c 105 § 1.]

**Severability—1991 c 105:** "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." [1991 c 105 § 6.]

**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 or her 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. [1997 c 112 § 17; 1973 1st ex.s. c 142 § 27.]

**71.05.230 Procedures for additional treatment.** A person detained for seventy-two hour evaluation and treat-

ment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days 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 the condition is caused by mental disorder and either results in a likelihood of serious harm, 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 or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; 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 ninety day 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, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. 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, 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 or her attorney and his or her 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 intensive treatment or a ninety day less restrictive alternative treatment after a probable cause hearing has been held pursuant to RCW 71.05.240; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the mental health professional designated by the county may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility. [1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

**71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing.** If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative 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. If requested by the detained person or his or her 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, 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. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, 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 ninety 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 or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. The court shall also provide written notice that the person is barred from the possession of firearms. [1997 c 112 § 19; 1992 c 168 § 3; 1987 c 439 § 5; 1979 ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

**Severability—1992 c 168:** See note following RCW 9.41.070.

**71.05.260 Release from involuntary intensive treatment—Exception.** (1) Involuntary intensive 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 or her professional designee, (a) the person no longer constitutes a likelihood of serious harm, 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. [1997 c 112 § 20; 1987 c 439 § 7; 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 or her 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. [1997 c 112 § 21; 1973 1st ex.s. c 142 § 32.]

**71.05.280 Additional confinement—Grounds.** 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 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 herself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090(3), 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. [1997 c 112 § 22; 1986 c 67 § 3; 1979 ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

**71.05.285 Additional confinement—Determination of disability.** For the purposes of continued less restrictive alternative commitment under the process provided in RCW 71.05.280 and 71.05.320(2), in determining whether or not the person is gravely disabled, great weight shall be given to evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) Repeated hospitalizations; or (2) repeated peace officer interventions resulting in juvenile offenses, criminal charges, diversion programs, or jail admissions. Such evidence may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety. [1997 c 112 § 23.]

**71.05.290 Petition for additional confinement—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 or her 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), then the professional person in charge of the treatment facility or his or her professional designee or the county designated mental health professional may directly file a petition for one hundred eighty 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. [1997 c 112 § 24; 1986 c 67 § 4; 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 representative.** The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. 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 or her attorney, if any, and his or her 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 or her of his or her right to be represented by an attorney and of his or her 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 or her. 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 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a developmentally disabled person who has been determined to be incompetent pursuant to RCW 10.77.090(3), then the appointed professional person under this section shall be a developmental disabilities professional.

The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [1997 c 112 § 25; 1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

**71.05.320 Remand for additional treatment—Duration—Developmentally disabled—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 or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department. If the committed person is developmentally disabled and has been determined incompetent pursuant to RCW 10.77.090(3), and 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 or her to the custody of the department or to a facility certified for one hundred eighty-day treatment by the department. When appropriate and subject to available funds, treatment and training of such persons must be provided in a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. 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 or developmental disabilities professional may order the person apprehended under the terms and conditions of RCW 71.05.340.

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 or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(2) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional or developmental disabilities 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 or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection 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 in this subsection. 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.

(3) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [1997 c 112 § 26; 1989 c 420 § 15; 1986 c 67 § 5; 1979 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 and prosecuting attorney—Petition for hearing.** (1) 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 or her 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.

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 the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is released under this section, the superintendent or professional person in



charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter. [1997 c 112 § 27; 1986 c 67 § 1; 1973 1st ex.s. c 142 § 38.]

**71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation.** (1)(a) 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.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the conditions for early release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine

whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(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)(a) 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 or her release, that substantial deterioration in the person's functioning has occurred, there is evidence of substantial decompensation with a high probability that the decompensation can be reversed by further inpatient treatment, or there is a likelihood of serious harm, then, upon notification by the hospital or facility designated to provide outpatient care, or on his or her 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 or she is receiving outpatient treatment. The person shall be detained 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 or she 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.

(b) 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 or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her 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: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a high probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(b) have occurred, whether the conditions of release should be modified or the person should be returned to the facility.

(c) 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 or she 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 or her counsel and his or her 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 five 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.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order. [1997 c 112 § 28; 1987 c 439 § 10; 1986 c 67 § 6; 1979 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 or she deems 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. [1997 c 112 § 29; 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 or her under this chapter.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment. [1997 c 112 § 30; 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 or her own clothes and to keep and use his or her 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 or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her 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 administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(2) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the

treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer antipsychotic medication or electroconvulsant therapy filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication.

(e) Any person detained pursuant to RCW 71.05.320(2), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in RCW 71.05.370(7).

(f) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order pursuant to RCW 71.05.215(2) or under the following circumstances:

(i) A person presents an imminent likelihood of serious harm;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

(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 or her under any circumstances. [1997 c 112 § 31; 1991 c 105 § 5; 1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42.]

**Severability—1991 c 105:** See note following RCW 71.05.215.

**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 or her unauthorized disappearance from the facility, and his or her 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 or her professional designee. [1997 c 112 § 32; 1973 2nd ex.s. c 24 § 7; 1973 1st ex.s. c 142 § 46.]

**71.05.460 Right to counsel.** Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her. [1997 c 112 § 33; 1973 1st ex.s. c 142 § 51.]

**71.05.470 Right to examination.** A person challenging his or her detention or his or her 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 or she is financially able, bear the cost of such expert information, otherwise such expert examination shall be at public expense. [1997 c 112 § 34; 1973 1st ex.s. c 142 § 52.]

**71.05.490 Rights of persons committed before January 1, 1974.** Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right available to him or her at or prior to January 1, 1974, for obtaining release from confinement. [1997 c 112 § 35; 1973 1st ex.s. c 142 § 54.]

**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, 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 or her 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. [1997 c 112 § 36; 1975 1st ex.s. c 199 § 12.]

## Chapter 71.12 PRIVATE ESTABLISHMENTS

### Sections

71.12.595 Suspension of license—Noncompliance with support order—  
Reissuance.

**71.12.595 Suspension of license—Noncompliance with support order—Reissuance.** The department of health shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department of health's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 860.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 71.24

### COMMUNITY MENTAL HEALTH SERVICES ACT

#### Sections

71.24.025 Definitions.  
71.24.450 Mentally ill offenders—Findings and intent.  
71.24.455 Mentally ill offenders—Contracts for specialized access and services.  
71.24.460 Mentally ill offenders—Report to legislature—Contingent termination of program.

**71.24.025 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24.045. When regional support networks are established or after July 1, 1995, "available resources" means federal funds, except

those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(d).

(3) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(4) "Child" means a person under the age of eighteen years.

(5) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(6) "Severely emotionally disturbed child" means an infant or child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from various

public sources including: (a) Federal medicare, medicaid, or early periodic screening, diagnostic, and treatment programs; or (b) state funds from the division of mental health, division of children and family services, division of alcohol and substance abuse, or division of vocational rehabilitation of the department of social and health services.

(8) "Community mental health program" means all mental health services established by a county authority. After July 1, 1995, or when the regional support networks are established, "community mental health program" means all activities or programs using available resources.

(9) "Community support services" means services for acutely mentally ill persons, chronically mentally ill adults, and severely emotionally disturbed children and includes: (a) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (b) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community maintenance; and (c) medication monitoring. After July 1, 1995, or when regional support networks are established, for adults and children "community support services" means services authorized, planned, and coordinated through resource management services including, at least, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW. case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill adults and severely emotionally disturbed children.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

(12) "Mental health services" means community services pursuant to RCW 71.24.035(5)(b) and other services provided by the state for the mentally ill. When regional support networks are established, or after July 1, 1995, "mental health services" shall include all services provided by regional support networks.

(13) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), (6), and (17) of this section.

(14) "Regional support network" means a county authority or group of county authorities recognized by the

secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

(15) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(16) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(17) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

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

(19) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as established by departmental rules and necessary to implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service; and the rights and responsibilities of persons receiving mental health services pursuant to this chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict programming flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers.

(20) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [1997 c 112 § 38; 1995 c 96 § 4. Prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

**Effective date—1995 c 96:** See note following RCW 71.21.400.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1986 c 274 §§ 1, 2, 3, 5, 9:** See note following RCW 71.24.015.

**71.24.450 Mentally ill offenders—Findings and intent.** (1) Many acute and chronically mentally ill offenders are delayed in their release from Washington correctional facilities due to their inability to access reasonable treatment and living accommodations prior to the maximum expiration of their sentences. Often the offender reaches the end of his or her sentence and is released without any follow-up care, funds, or housing. These delays are costly to the state, often lead to psychiatric relapse, and result in unnecessary risk to the public.

These offenders rarely possess the skills or emotional stability to maintain employment or even complete applications to receive entitlement funding. Nation-wide only five percent of diagnosed schizophrenics are able to maintain part-time or full-time employment. Housing and appropriate treatment are difficult to obtain.

This lack of resources, funding, treatment, and housing creates additional stress for the mentally ill offender, impairing self-control and judgment. When the mental illness is instrumental in the offender's patterns of crime, such stresses may lead to a worsening of his or her illness, reoffending, and a threat to public safety.

(2) It is the intent of the legislature to create a pilot program to provide for postrelease mental health care and housing for a select group of mentally ill offenders entering community living, in order to reduce incarceration costs, increase public safety, and enhance the offender's quality of life. [1997 c 342 § 1.]

**Severability—1997 c 342:** "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." [1997 c 342 § 6.]

**71.24.455 Mentally ill offenders—Contracts for specialized access and services.**

(1) The secretary shall select and contract with a regional support network or private provider to provide specialized access and services to mentally ill offenders upon release from total confinement within the department of corrections who have been identified by the department of corrections and selected by the regional support network or private provider as high-priority clients for services and who meet service program entrance criteria. The program shall enroll no more than twenty-five offenders at any one time, or a number of offenders that can be accommodated within the appropriated funding level, and shall seek to fill any vacancies that occur.

(2) Criteria shall include a determination by department of corrections staff that:

(a) The offender suffers from a major mental illness and needs continued mental health treatment;

(b) The offender's previous crime or crimes have been determined by either the court or department of corrections staff to have been substantially influenced by the offender's mental illness;

(c) It is believed the offender will be less likely to commit further criminal acts if provided ongoing mental health care;

(d) The offender is unable or unlikely to obtain housing and/or treatment from other sources for any reason; and

(e) The offender has at least one year remaining before his or her sentence expires but is within six months of release to community housing and is currently housed within a work release facility or any department of corrections' division of prisons facility.

(3) The regional support network or private provider shall provide specialized access and services to the selected offenders. The services shall be aimed at lowering the risk of recidivism. An oversight committee composed of a representative of the department, a representative of the selected regional support network or private provider, and a representative of the department of corrections shall develop policies to guide the pilot program, provide dispute resolution including making determinations as to when entrance criteria or required services may be waived in individual cases, advise the department of corrections and the regional support network or private provider on the selection of eligible offenders, and set minimum requirements for service contracts. The selected regional support network or private

provider shall implement the policies and service contracts. The following services shall be provided:

(a) Intensive case management to include a full range of intensive community support and treatment in client-to-staff ratios of not more than ten offenders per case manager including: (i) A minimum of weekly group and weekly individual counseling; (ii) home visits by the program manager at least two times per month; and (iii) counseling focusing on relapse prevention and past, current, or future behavior of the offender.

(b) The case manager shall attempt to locate and procure housing appropriate to the living and clinical needs of the offender and as needed to maintain the psychiatric stability of the offender. The entire range of emergency, transitional, and permanent housing and involuntary hospitalization must be considered as available housing options. A housing subsidy may be provided to offenders to defray housing costs up to a maximum of six thousand six hundred dollars per offender per year and be administered by the case manager. Additional funding sources may be used to offset these costs when available.

(c) The case manager shall collaborate with the assigned prison, work release, or community corrections staff during release planning, prior to discharge, and in ongoing supervision of the offender while under the authority of the department of corrections.

(d) Medications including the full range of psychotropic medications including atypical antipsychotic medications may be required as a condition of the program. Medication prescription, medication monitoring, and counseling to support offender understanding, acceptance, and compliance with prescribed medication regimens must be included.

(e) A systematic effort to engage offenders to continuously involve themselves in current and long-term treatment and appropriate rehabilitative activities shall be made.

(f) Classes appropriate to the clinical and living needs of the offender and appropriate to his or her level of understanding.

(g) The case manager shall assist the offender in the application and qualification for entitlement funding, including medicaid, state assistance, and other available government and private assistance at any point that the offender is qualified and resources are available.

(h) The offender shall be provided access to daily activities such as drop-in centers, prevocational and vocational training and jobs, and volunteer activities.

(4) Once an offender has been selected into the pilot program, the offender shall remain in the program until the end of his or her sentence or unless the offender is released from the pilot program earlier by the department of corrections.

(5) Specialized training in the management and supervision of high-crime risk mentally ill offenders shall be provided to all participating mental health providers by the department and the department of corrections prior to their participation in the program and as requested thereafter.

(6) The pilot program provided for in this section must be providing services by July 1, 1998. [1997 c 342 § 2.]

**Severability—1997 c 342:** See note following RCW 71.24.450.

**71.24.460 Mentally ill offenders—Report to legislature—Contingent termination of program.** The department, in collaboration with the department of corrections and the oversight committee created in RCW 71.24.455, shall track outcomes and submit to the legislature a report of services and outcomes by December 1, 1998, and annually thereafter as may be necessary. The reports shall include the following: (1) A statistical analysis regarding the reoffense and reinstitutionalization rate by the enrollees in the program set forth in RCW 71.24.455; (2) a quantitative description of the services provided in the program set forth in RCW 71.24.455; and (3) recommendations for any needed modifications in the services and funding levels to increase the effectiveness of the program set forth in RCW 71.24.455. By December 1, 2003, the department shall certify the reoffense rate for enrollees in the program authorized by RCW 71.24.455 to the office of financial management and the appropriate legislative committees. If the reoffense rate exceeds fifteen percent, the authorization for the department to conduct the program under RCW 71.24.455 is terminated on January 1, 2004. [1997 c 342 § 4.]

**Severability—1997 c 342:** See note following RCW 71.24.450.

## Title 72

### STATE INSTITUTIONS

#### Chapters

- 72.01 Administration.**  
**72.09 Department of corrections.**  
**72.65 Work release program.**

#### Chapter 72.01

##### ADMINISTRATION

#### Sections

- 72.01.410 Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders.  
 72.01.415 Offender under eighteen confined to a jail—Segregation from adult offenders.

**72.01.410 Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders.** (1) Whenever any child under the age of eighteen 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 corrections, after making an independent assessment and evaluation of the child and determining that the needs and correctional goals for the child could better be met by the programs and housing environment provided by the juvenile correctional institution, with the consent of 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 twenty-one years, whereupon the child shall be returned to the institution of original commitment. Retention within a juvenile detention facility or return to an adult correctional facility shall



regularly be reviewed by the secretary of corrections and the secretary of social and health services with a determination made based on the level of maturity and sophistication of the individual, the behavior and progress while within the juvenile detention facility, security needs, and the program/treatment alternatives which would best prepare the individual for a successful return to the community. 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.

(2)(a) Except as provided in (b) of this subsection, an offender under the age of eighteen who is convicted in adult criminal court and who is committed to a term of confinement at the department of corrections must be placed in a housing unit, or a portion of a housing unit, that is separated from offenders eighteen years of age or older, until the offender reaches the age of eighteen.

(b) An offender under the age of eighteen may be housed in an intensive management unit or administrative segregation unit containing offenders eighteen years of age or older if it is necessary for the safety or security of the offender or staff. In these cases, the offender shall be kept physically separate from other offenders at all times. [1997 c 338 § 41; 1994 c 220 § 1; 1981 c 136 § 74; 1979 c 141 § 166; 1959 c 140 § 1.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Effective date—1981 c 136:** See RCW 72.09.900.

*Juvenile not to be confined with adult inmates: RCW 13.04.116.*

**72.01.415 Offender under eighteen confined to a jail—Segregation from adult offenders.** An offender under the age of eighteen who is convicted in adult criminal court of a crime and who is committed for a term of confinement in a jail as defined in RCW 70.48.020, must be housed in a jail cell that does not contain adult offenders, until the offender reaches the age of eighteen. [1997 c 338 § 42.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

## Chapter 72.09

### DEPARTMENT OF CORRECTIONS

#### Sections

- 72.09.251 Communicable disease prevention guidelines.
- 72.09.330 Sex offenders and kidnapping offenders—Registration—Notice to persons convicted of sex offenses and kidnapping offenses.
- 72.09.345 Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices.
- 72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Department coordination and plans.
- 72.09.480 Inmate funds subject to deductions.

**72.09.251 Communicable disease prevention guidelines.** (1) The department shall develop and implement

policies and procedures for the uniform distribution of communicable disease prevention guidelines to all corrections staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means sexually transmitted diseases, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 4.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

**72.09.330 Sex offenders and kidnapping offenders—Registration—Notice to persons convicted of sex offenses and kidnapping offenses.** (1) The department shall provide written notification to an inmate convicted of a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgment of receipt.

(2) The department shall provide written notification to an individual convicted of a sex offense or kidnapping offense from another state of the registration requirements of RCW 9A.44.130 at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270. [1997 c 113 § 8; 1990 c 3 § 405.]

**Findings—1997 c 113:** See note following RCW 4.24.550.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

*Sex offense and kidnapping offense defined: RCW 9A.44.130.*

**72.09.345 Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices.** (1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The committee shall assess, on a case-by-case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from confinement for sex offenses committed on or after July 1, 1984; and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.

(3) Notwithstanding any other provision of law, the committee shall have access to all relevant records and

information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(4) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community placement or community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(5) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(6) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification. [1997 c 364 § 4.]

**Severability—1997 c 364:** See note following RCW 4.24.550.

**72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Department coordination and plans.** (1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted under subsection (4) of this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges. The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(2) The department shall provide a program of education to all offenders who are under the age of eighteen and who have not met high school graduation or general equivalency

diploma requirements. The program of education established by the department for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or general equivalency diploma.

(3) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(a) Achievement of basic academic skills through obtaining a high school diploma or its equivalent and achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(b) Additional work and education programs based on assessments and placements under subsection (5) of this section; and

(c) Other work and education programs as appropriate.

(4) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a medical condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all temporarily disabled inmates to ensure the earliest possible entry or reentry by inmates into available programming.

(5) The department shall establish, by rule, standards for participation in department-approved education and work programs. The standards shall address the following areas:

(a) **Assessment.** The department shall assess all inmates for their basic academic skill levels using a professionally accepted method of scoring reading, math, and language skills as grade level equivalents. The department shall determine an inmate's education history, work history, and vocational or work skills. The initial assessment shall be conducted, whenever possible, within the first thirty days of an inmate's entry into the correctional system, except that initial assessments are not required for inmates who are sentenced to life without the possibility of release, assigned to an intensive management unit within the first thirty days after entry into the correctional system, are returning to the correctional system within one year of a prior release, or whose physical or mental condition renders them unable to complete the assessment process. The department shall track and record changes in the basic academic skill levels of all inmates reflected in any testing or assessment performed as part of their education programming;

(b) **Placement.** The department shall follow the policies set forth in subsection (1) of this section in establishing criteria for placing inmates in education and work programs. The department shall, to the extent possible, place all inmates whose composite grade level score for basic academic skills is below the eighth grade level in a combined education and work program. The placement criteria shall include at least the following factors:

(i) An inmate's release date and custody level, except an inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(c) Performance and goals. The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals;

(d) Financial responsibility. (i) The department shall establish a formula by which inmates, based on their ability to pay, shall pay all or a portion of the costs or tuition of certain programs. Inmates shall, based on the formula, pay a portion of the costs or tuition of participation in:

(A) Second and subsequent vocational programs associated with an inmate's work programs; and

(B) An associate of arts or baccalaureate degree program when placement in a degree program is the result of a placement made under this subsection;

(ii) Inmates shall pay all costs and tuition for participation in:

(A) Any postsecondary academic degree program which is entered independently of a placement decision made under this subsection; and

(B) Second and subsequent vocational programs not associated with an inmate's work program.

Enrollment in any program specified in (d)(ii) of this subsection shall only be allowed by correspondence or if there is an opening in an education or work program at the institution where an inmate is incarcerated and no other inmate who is placed in a program under this subsection will be displaced; and

(e) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release:

(i) Shall not be required to participate in education programming; and

(ii) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers.

If an inmate sentenced to life without the possibility of release requires prevocational or vocational training for a work program, he or she may participate in the training subject to this section.

(6) The department shall coordinate education and work programs among its institutions, to the greatest extent possible, to facilitate continuity of programming among inmates transferred between institutions. Before transferring an inmate enrolled in a program, the department shall consider the effect the transfer will have on the inmate's ability to continue or complete a program. This subsection

shall not be used to delay or prohibit a transfer necessary for legitimate safety or security concerns.

(7) Before construction of a new correctional institution or expansion of an existing correctional institution, the department shall adopt a plan demonstrating how cable, closed-circuit, and satellite television will be used for education and training purposes in the institution. The plan shall specify how the use of television in the education and training programs will improve inmates' preparedness for available work programs and job opportunities for which inmates may qualify upon release.

(8) The department shall adopt a plan to reduce the per-pupil cost of instruction by, among other methods, increasing the use of volunteer instructors and implementing technological efficiencies. The plan shall be adopted by December 1996 and shall be transmitted to the legislature upon adoption. The department shall, in adoption of the plan, consider distance learning, satellite instruction, video tape usage, computer-aided instruction, and flexible scheduling of offender instruction.

(9) Following completion of the review required by section 27(3), chapter 19, Laws of 1995 1st sp. sess. the department shall take all necessary steps to assure the vocation and education programs are relevant to work programs and skills necessary to enhance the employability of inmates upon release. [1997 c 338 § 43; 1995 1st sp.s. c 19 § 5.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

#### **72.09.480 Inmate funds subject to deductions.** (1)

Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(2) When an inmate receives any funds in addition to his or her wages or gratuities, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(3) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer. [1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**Chapter 72.65**  
**WORK RELEASE PROGRAM**

## Sections

72.65.220 Facility siting process.

**72.65.220 Facility siting process.** (1) The department or a private or public entity under contract with the department may establish or relocate for the operation of a work release or other community-based facility only after public notifications and local public meetings have been completed consistent with this section.

(2) The department and other state agencies responsible for siting department-owned, operated, or contracted facilities shall establish a process for early and continuous public participation in establishing or relocating work release or other community-based facilities. This process shall include public meetings in the local communities affected, opportunities for written and oral comments, and wide dissemination of proposals and alternatives, including at least the following:

(a) When the department or a private or public entity under contract with the department has selected three or fewer sites for final consideration of a department-owned, operated, or contracted work release or other community-based facility, the department or contracting organization shall make public notification and conduct public hearings in the local communities of the final three or fewer proposed sites. An additional public hearing after public notification shall also be conducted in the local community selected as the final proposed site.

(b) Notifications required under this section shall be provided to the following:

(i) All newspapers of general circulation in the local area and all local radio stations, television stations, and cable networks;

(ii) Appropriate school districts, private schools, kindergartens, city and county libraries, and all other local government offices within a one-half mile radius of the proposed site or sites;

(iii) The local chamber of commerce, local economic development agencies, and any other local organizations that request such notification from the department; and

(iv) In writing to all residents and/or property owners within a one-half mile radius of the proposed site or sites.

(3) When the department contracts for the operation of a work release or other community-based facility that is not owned or operated by the department, the department shall require as part of its contract that the contracting entity comply with all the public notification and public hearing requirements as provided in this section for each located and relocated work release or other community-based facility. [1997 c 348 § 1; 1994 c 271 § 1001.]

**Effective date—1994 c 271 § 1001:** "Section 1001 of this act shall take effect July 1, 1994." [1994 c 271 § 1101.]

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

## Title 73

**VETERANS AND VETERANS' AFFAIRS**

## Chapters

73.08 Veterans' relief.

## Chapter 73.08

**VETERANS' RELIEF**

## Sections

73.08.070 County burial of indigent deceased veterans.

**73.08.070 County burial of indigent deceased veterans.** It shall be the duty of the legislative authority 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 veterans as defined in RCW 41.04.005 and the wives, husbands, minor children, widows or widowers of such veterans, 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 the limit established by the county legislative authority nor less than three hundred 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 the limit established by the county legislative authority nor less than three hundred 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. [1997 c 286 § 1; 1983 c 295 § 5; 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.*

## Title 74

**PUBLIC ASSISTANCE**

## Chapters

74.04 General provisions—Administration.

74.08 Eligibility generally—Standards of assistance.

74.08A Washington WorkFirst temporary assistance for needy families.

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#### Chapter 74.04

#### GENERAL PROVISIONS—ADMINISTRATION

##### Sections

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**74.04.005 Definitions—Eligibility.** 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 or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means 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 for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Meet one of the following conditions:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal temporary assistance for needy families program; or

(B) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental

infirmity that will likely continue for a minimum of ninety days as determined by the department.

(C) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. Subsection (6)(a)(ii)(B) of this section shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of temporary assistance for needy families whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) Persons found eligible for general assistance based on incapacity from gainful employment may, if otherwise eligible, receive general assistance pending application for federal supplemental security income benefits. Any general assistance that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(e) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(f) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall not have their benefits terminated absent a clear showing of material improvement in their medical or mental condition or specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and are not eligible to receive benefits under the federal temporary assistance for needy families program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal temporary assistance for needy families program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "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 herself or his or her dependents, the property shall be considered as a resource which can be made available to meet need, and if the recipient or his or her dependents absent themselves

from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons or a natural disaster, shall raise a rebuttable presumption of abandonment: PROVIDED, That if in the opinion of three physicians the recipient will be unable to return to the home during his or her lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as a resource which can be made available to meet need.

(b) Household furnishings and personal effects and other personal property having great sentimental value to the applicant or recipient, as limited by the department consistent with limitations on resources and exemptions for federal aid assistance.

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars.

(d) A motor vehicle necessary to transport a physically disabled household member. This exclusion is limited to one vehicle per physically disabled person.

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars.

(f) Applicants for or recipients of general assistance shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department.

(g) 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, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) 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 during the month of application or after applying for or receiving public assistance. 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 or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her 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. In determining the amount of assistance to which an applicant or recipient of temporary assistance for needy families is entitled, the department is hereby authorized to disregard as a resource or income the earned income exemptions consistent with federal requirements. 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 and recipients of public assistance, but consistent with federal requirements. In formulating rules and regulations pursuant to this chapter, the department shall define income and resources and the availability thereof, consistent with federal requirements. 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.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(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. [1997 c 59 § 10; 1997 c 58 § 309. Prior: 1992 c 165 § 1; 1992 c 136 § 1; 1991 sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816; prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 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 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

**Reviser's note:** This section was amended by 1997 c 58 § 309 and by 1997 c 59 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1991 sp.s. c 10:** "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." [1991 sp.s. c 10 § 2.]

**Effective date—1991 sp.s. c 10:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 10 § 3.]

**Findings—Purpose—1990 c 285:** "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

**Severability—1990 c 285:** "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." [1990 c 285 § 10.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Effective date—1981 1st ex.s. c 6:** "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, 1981." [1981 1st ex.s. c 6 § 31.]

**Severability—1981 1st ex.s. c 6:** "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." [1981 1st ex.s. c 6 § 30.]

*Consolidated standards of need:* RCW 74.04.770.

**74.04.0052 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral.** (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and pregnant who are eligible for general assistance as defined in RCW 74.04.005(6)(a)(ii)(A). An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assistance shall not be provided under this chapter if the applicant does not reside



in the most appropriate living situation, as determined by the department.

(2) A pregnant minor residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, provide information about adoption including referral to community-based organizations providing counseling.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [1997 c 58 § 502; 1994 c 299 § 34.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

*Aid to families with dependent children:* RCW 74.12.255.

**74.04.062 Disclosure of recipient location to police officer or immigration official.** Upon written request of a person who has been properly identified as an officer of the law or a properly identified United States immigration official the department shall disclose to such officer the current address and location of a recipient of public welfare if the officer furnishes the department with such person's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive, that the location or apprehension of such fugitive is within the officer's official duties, and that the request is made in the proper exercise of those duties.

When the department becomes aware that a public assistance recipient is the subject of an outstanding warrant, the department may contact the appropriate law enforcement agency and, if the warrant is valid, provide the law enforce-

ment agency with the location of the recipient. [1997 c 58 § 1006; 1973 c 152 § 2.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1973 c 152:** See note following RCW 74.04.060.

**74.04.770 Consolidated standards of need—Rateable reductions—Grant maximums.** The department shall establish consolidated standards of need each fiscal year which may vary by geographical areas, program, and family size, for temporary assistance for needy families, refugee assistance, supplemental security income, and general assistance. Standards for temporary assistance for needy families, refugee assistance, and general assistance shall be based on studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance and operations, personal maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but unless explicitly required by federal statute, there shall not be proration of any portion of assistance grants unless the amount of the grant standard is equal to the standard of need.

The department is authorized to establish rateable reductions and grant maximums consistent with federal law.

Payment level will be equal to need or a lesser amount if rateable reductions or grant maximums are imposed. In no case shall a recipient of supplemental security income receive a state supplement less than the minimum required by federal law.

The department may establish a separate standard for shelter provided at no cost. [1997 c 59 § 11; 1983 1st ex.s. c 41 § 38; 1981 2nd ex.s. c 10 § 4.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

## Chapter 74.08

### ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE

#### Sections

- 74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons, and former felons.
- 74.08.080 Grievances—Departmental and judicial review.
- 74.08.120 Repealed.
- 74.08.125 Repealed.
- 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties
- 74.08.335 Transfers of property to qualify for assistance.
- 74.08.340 No vested rights conferred.

**74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons, and former felons.** (1) Public assistance may be awarded to any applicant:

(a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(b) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) 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. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families under this title who has resided in the state of Washington for fewer than twelve consecutive months immediately preceding application for assistance is limited to the benefit level in the state in which the person resided immediately before Washington, using the eligibility rules and other definitions established under this chapter, that was obtainable on the date of application in Washington state, if the benefit level of the prior state is lower than the level provided to similarly situated applicants in Washington state. The benefit level under this subsection shall be in effect for the first twelve months a recipient is on temporary assistance for needy families in Washington state.

(3) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

(4) In order to be eligible for temporary assistance for needy families and food stamp program benefits, any applicant with a felony conviction after August 21, 1996, involving drug use or possession, must: (a) Have been assessed as chemically dependent by a chemical dependency program approved under chapter 70.96A RCW and be participating in or have completed a coordinated rehabilitation plan consisting of chemical dependency treatment and vocational services; and (b) have not been convicted of a felony involving drug use or possession in the three years prior to the most current conviction. [1997 c 58 § 101; 1981 1st ex.s. c 6 § 9; 1981 c 8 § 8; 1980 c 79 § 1; 1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.08.080 Grievances—Departmental and judicial review.** (1)(a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance or food stamps, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date of application for temporary assistance for needy families or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3)(a) [(3)] When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered in a public assistance program, no filing fee shall be collected from the person and no bond shall be required on any appeal. 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 for assistance or thirty days after the application for temporary assistance for needy families 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 local community services office decision. [1997 c 59 § 12; 1989 c 175 § 145; 1988 c 202 § 58; 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.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

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

**74.08.120 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.08.125 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties.** Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities and food stamps, as required by law, or a willful 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, including unemployment insurance, or any other change in circumstances affecting the person's 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 the person is not entitled or greater public assistance than that to which he or she is justly entitled shall be guilty of grand larceny and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

Any person who by means of a willfully 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. [1997 c 58 § 303; 1992 c 7 § 59; 1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.08.335 Transfers of property to qualify for assistance.** Temporary assistance for needy families and general assistance shall not be granted to any person who has made an assignment or transfer of property for the purpose of rendering himself or herself eligible for the assistance. There is a rebuttable presumption that a person who has transferred or transfers any real or personal property

or any interest in property within two years of the date of application for the assistance without receiving adequate monetary consideration therefor, did so for the purpose of rendering himself or herself eligible for the assistance. Any person who transfers property for the purpose of rendering himself or herself eligible for assistance, 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 assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet the person's 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. [1997 c 59 § 13; 1980 c 79 § 2; 1979 c 141 § 330; 1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

**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. There is no legal entitlement to public assistance. [1997 c 58 § 102; 1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998-21.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

## Chapter 74.08A

### WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

#### Sections

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**74.08A.010 Time limits.** (1) A family that includes an adult who has received temporary assistance for needy families for sixty months after July 27, 1997, shall be ineligible for further temporary assistance for needy families assistance.

(2) For the purposes of applying the rules of this section, the department shall count any month in which an adult family member received a temporary assistance for needy families cash assistance grant unless the assistance was provided when the family member was a minor child and not the head of the household or married to the head of the household.

(3) The department shall refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of community, trade, and economic development, or the crime victims' compensation program of the department of labor and industries.

(4) The department may exempt a recipient and the recipient's family from the application of subsection (1) of this section by reason of hardship or if the recipient meets the family violence options of section 402(A)(7) of Title IVA of the federal social security act as amended by P.L. 104-193. The number of recipients and their families exempted from subsection (1) of this section for a fiscal year shall not exceed twenty percent of the average monthly number of recipients and their families to which assistance is provided under the temporary assistance for needy families program.

(5) The department shall not exempt a recipient and his or her family from the application of subsection (1) of this section until after the recipient has received fifty-two months of assistance under this chapter. [1997 c 58 § 103.]

**74.08A.020 Electronic benefit transfer.** By October 2002, the department shall develop and implement an electronic benefit transfer system to be used for the delivery of public assistance benefits, including without limitation, food assistance.

The department shall comply with P.L. 104-193, and shall cooperate with relevant federal agencies in the design and implementation of the electronic benefit transfer system. [1997 c 58 § 104.]

**74.08A.030 Provision of services by religiously affiliated organizations—Rules.** (1) The department shall

allow religiously affiliated organizations to provide services to families receiving temporary assistance for needy families on the same basis as any other nongovernmental provider, without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under chapter 74.12 RCW.

(2) The department shall adopt rules implementing this section, and the applicable sections of P.L. 104-193 related to services provided by charitable, religious, or private organizations. [1997 c 58 § 106.]

**74.08A.040 Indian tribes—Program access—Funding—Rules.** The department shall (1) provide eligible Indian tribes ongoing, meaningful opportunities to participate in the development, oversight, and operation of the state temporary assistance for needy families program; (2) certify annually that it is providing equitable access to the state temporary assistance for needy families program to Indian people whose tribe is not administering a tribal temporary assistance for needy families program; (3) coordinate and cooperate with eligible Indian tribes that elect to operate a tribal temporary assistance for needy families program as provided for in P.L. 104-193; (4) upon approval by the secretary of the federal department of health and human services of a tribal temporary assistance for needy families program, transfer a fair and equitable amount of the state maintenance of effort funds to the eligible Indian tribe; and (5) establish rules related to the operation of this section and RCW 74.08A.050, covering, at a minimum, appropriate uses of state maintenance of effort funds and annual reports on program operations. The legislature shall specify the amount of state maintenance of effort funds to be transferred in the biennial appropriations act. [1997 c 58 § 107.]

**Reviser's note:** 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

**74.08A.050 Indian tribes—Tribal program—Fiscal year.** An eligible Indian tribe exercising its authority under P.L. 104-193 to operate a tribal temporary assistance for needy families program shall operate the program on a state fiscal year basis. If a tribe decides to cancel a tribal temporary assistance for needy families program, it shall notify the department no later than ninety days prior to the start of the state fiscal year. [1997 c 58 § 108.]

**Reviser's note:** 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

**74.08A.060 Food stamp work requirements.** Single adults without dependents between eighteen and fifty years of age shall comply with federal food stamp work requirements as a condition of eligibility. The department may exempt any counties or subcounty areas from the federal food stamp work requirements in P.L. 104-193, unless the department receives written evidence of official action by a county or subcounty governing entity, taken after noticed consideration, that indicates that a county or subcounty area chooses not to use an exemption to the federal food stamp work requirements. [1997 c 58 § 110.]

**Reviser's note:** 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

**74.08A.100 Immigrants—Eligibility.** The state shall exercise its option under P.L. 104-193 to continue services to legal immigrants under temporary assistance for needy families, medicaid, and social services block grant programs. Eligibility for these benefits for legal immigrants arriving after August 21, 1996, is limited to those families where the parent, parents, or legal guardians have been in residence in Washington state for a period of twelve consecutive months before making their application for assistance. Legal immigrants who lose benefits under the supplemental security income program as a result of P.L. 104-193 are immediately eligible for benefits under the state's general assistance-unemployable program. The department shall redetermine income and resource eligibility at least annually, in accordance with existing state policy. [1997 c 57 § 1.]

**Captions not law—1997 c 57:** "Captions used in this act are not any part of the law." [1997 c 57 § 4.]

**74.08A.110 Immigrants—Sponsor deeming.** (1) Except as provided in subsection (4) of this section, qualified aliens and aliens permanently residing under color of law shall have their eligibility for assistance redetermined.

(2) In determining the eligibility and the amount of benefits of a qualified alien or an alien permanently residing under color of law for public assistance under this title, the income and resources of the alien shall be deemed to include the income and resources of any person and his or her spouse who executed an affidavit of support pursuant to section 213A of the federal immigration and naturalization act on behalf of the alien for a period of five years following the execution of that affidavit of support. The deeming provisions of this subsection shall be waived if the sponsor dies or is permanently incapacitated during the period the affidavit of support is valid.

(3) As used in this section, "qualified alien" has the meaning provided it in P.L. 104-183.

(4)(a) Qualified aliens specified under sections 403, 412, and 552 (e) and (f), subtitle B, Title IV, of P.L. 104-193 and in P.L. 104-208, are exempt from this section.

(b) Qualified aliens who served in the armed forces of an allied country, or were employed by an agency of the federal government, during a military conflict between the United States of America and a military adversary are exempt from the provisions of this section.

(c) Qualified aliens who are victims of domestic violence and petition for legal status under the federal violence against women act are exempt from the provisions of this section. [1997 c 57 § 2.]

**Captions not law—1997 c 57:** See note following RCW 74.08A.100.

**74.08A.120 Immigrants—Food assistance.** (1) The department may establish a food assistance program for persons whose immigrant status meets the eligibility requirements of the federal food stamp program, but who are no longer eligible solely due to their immigrant status under P.L. 104-193.

(2) The rules for the state food assistance program shall follow exactly the rules of the federal food stamp program except for the provisions pertaining to immigrant status under P.L. 104-193.

(3) The benefit under the state food assistance program shall be established by the legislature in the biennial operating budget.

(4) The department may enter into a contract with the United States department of agriculture to use the existing federal food stamp program coupon system for the purposes of administering the state food assistance program.

(5) In the event the department is unable to enter into a contract with the United States department of agriculture, the department may issue vouchers to eligible households for the purchase of eligible foods at participating retailers. [1997 c 57 § 3.]

**Captions not law—1997 c 57:** See note following RCW 74.08A.100.

**74.08A.130 Immigrants—Naturalization facilitation.** The department shall make an affirmative effort to identify and proactively contact legal immigrants receiving public assistance to facilitate their applications for naturalization. The department shall obtain a complete list of legal immigrants in Washington who are receiving correspondence regarding their eligibility from the social security administration. The department shall inform immigrants regarding how citizenship may be attained. In order to facilitate the citizenship process, the department shall coordinate and contract, to the extent necessary, with existing public and private resources and shall, within available funds, ensure that those immigrants who qualify to apply for naturalization are referred to or otherwise offered classes. The department shall assist eligible immigrants in obtaining appropriate test exemptions, and other exemptions in the naturalization process, to the extent permitted under federal law. The department shall report annually by December 15th to the legislature regarding the progress and barriers of the immigrant naturalization facilitation effort. It is the intent of the legislature that persons receiving naturalization assistance be facilitated in obtaining citizenship within two years of their eligibility to apply. [1997 c 58 § 204.]

**74.08A.200 Intent—Washington WorkFirst.** It is the intent of the legislature that all applicants to the Washington WorkFirst program shall be focused on obtaining paid, unsubsidized employment. The focus of the Washington WorkFirst program shall be work for all recipients. [1997 c 58 § 301.]

**74.08A.210 Diversion program—Emergency assistance.** (1) In order to prevent some families from developing dependency on temporary assistance for needy families, the department shall make available to qualifying applicants a diversion program designed to provide brief, emergency assistance for families in crisis whose income and assets would otherwise qualify them for temporary assistance for needy families.

(2) Diversion assistance may include cash or vouchers in payment for the following needs:

- (a) Child care;
- (b) Housing assistance;

- (c) Transportation-related expenses;
- (d) Food;
- (e) Medical costs for the recipient's immediate family;
- (f) Employment-related expenses which are necessary to keep or obtain paid unsubsidized employment.

(3) Diversion assistance is available once in each twelve-month period for each adult applicant. Recipients of diversion assistance are not included in the temporary assistance for needy families program.

(4) Diversion assistance may not exceed one thousand five hundred dollars for each instance.

(5) To be eligible for diversion assistance, a family must otherwise be eligible for temporary assistance for needy families.

(6) Families ineligible for temporary assistance for needy families or general assistance due to sanction, non-compliance, the lump sum income rule, or any other reason are not eligible for diversion assistance.

(7) Families must provide evidence showing that a bona fide need exists according to subsection (2) of this section in order to be eligible for diversion assistance.

An adult applicant may receive diversion assistance of any type no more than once per twelve-month period. If the recipient of diversion assistance is placed on the temporary assistance for needy families program within twelve months of receiving diversion assistance, the prorated dollar value of the assistance shall be treated as a loan from the state, and recovered by deduction from the recipient's cash grant. [1997 c 58 § 302.]

**74.08A.220 Individual development accounts—Microcredit and microenterprise approaches—Rules.** The department shall carry out a program to fund individual development accounts established by recipients eligible for assistance under the temporary assistance for needy families program.

(1) An individual development account may be established by or on behalf of a recipient eligible for assistance provided under the temporary assistance for needy families program operated under this title for the purpose of enabling the recipient to accumulate funds for a qualified purpose described in subsection (2) of this section.

(2) A qualified purpose as described in this subsection is one or more of the following, as provided by the qualified entity providing assistance to the individual:

(a) Postsecondary expenses paid from an individual development account directly to an eligible educational institution;

(b) Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer, if paid from an individual development account directly to the persons to whom the amounts are due;

(c) Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(3) A recipient may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d)(2) of the internal revenue code of 1986.

(4) The department shall establish rules to ensure funds held in an individual development account are only withdrawn for a qualified purpose as provided in this section.

(5) An individual development account established under this section shall be a trust created or organized in the United States and funded through periodic contributions by the establishing recipient and matched by or through a qualified entity for a qualified purpose as provided in this section.

(6) For the purpose of determining eligibility for any assistance provided under this title, all funds in an individual development account under this section shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(7) The department shall adopt rules authorizing the use of organizations using microcredit and microenterprise approaches to assisting low-income families to become financially self-sufficient.

(8) The department shall adopt rules implementing the use of individual development accounts by recipients of temporary assistance for needy families.

(9) For the purposes of this section, "eligible educational institution," "postsecondary educational expenses," "qualified acquisition costs," "qualified business," "qualified business capitalization expenses," "qualified expenditures," "qualified first-time home buyer," "date of acquisition," "qualified plan," and "qualified principal residence" include the meanings provided for them in P.L. 104-193. [1997 c 58 § 307.]

**74.08A.230 Earnings disregards and earned income cutoffs.** (1) In addition to their monthly benefit payment, a family may earn and keep one-half of its earnings during every month it is eligible to receive assistance under this section.

(2) In no event may a family be eligible for temporary assistance for needy families if its monthly gross earned income exceeds the maximum earned income level as set by the department. In calculating a household's gross earnings, the department shall disregard the earnings of a minor child who is:

(a) A full-time student; or

(b) A part-time student carrying at least half the normal school load and working fewer than thirty-five hours per week. [1997 c 58 § 308.]

**74.08A.240 Noncustodial parents in work programs.** The department may provide Washington WorkFirst activities or make cross-referrals to existing programs to qualifying noncustodial parents of children receiving temporary assistance for needy families who are unable to meet their child support obligations. Services authorized under this section shall be provided within available funds. [1997 c 58 § 310.]

**74.08A.250 "Work activity" defined.** Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

(1) Unsubsidized paid employment in the private or public sector;

(2) Subsidized paid employment in the private or public sector;

(3) Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

(4) On-the-job training;

(5) Job search and job readiness assistance;

(6) Community service programs;

(7) Vocational educational training, not to exceed twelve months with respect to any individual;

(8) Job skills training directly related to employment;

(9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a GED;

(10) Satisfactory attendance at secondary school or in a course of study leading to a GED, in the case of a recipient who has not completed secondary school or received such a certificate;

(11) The provision of child care services to an individual who is participating in a community service program; and

(12) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(3) to become employable. [1997 c 58 § 311.]

**74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work.** Recipients who have not obtained paid, unsubsidized employment by the end of the job search component authorized in \*section 312 of this act shall be referred to a work activity.

(1) Each recipient shall be assessed immediately upon completion of the job search component. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, employment strengths, and employment history. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient. Based on the assessment, an individual responsibility plan shall be prepared that:

(a) Sets forth an employment goal and a plan for moving the recipient immediately into employment; (b) contains the obligation of the recipient to become and remain employed; (c) moves the recipient into whatever employment the recipient is capable of handling as quickly as possible; and (d) describes the services available to the recipient to enable the recipient to obtain and keep employment.

(2) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(3) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(4) The department may waive the penalties required under subsection (3) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(5) In implementing this section, the department shall assign the highest priority to the most employable clients, including adults in two-parent families and parents in single-

parent families that include older preschool or school-age children to be engaged in work activities.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides. [1997 c 58 § 313.]

**\*Reviser's note:** Section 312 of this act was vetoed by the governor.

**74.08A.270 Good cause.** Good cause reasons for failure to participate in WorkFirst program components include: (1) Situations where the recipient is a parent or other relative personally providing care for a child under the age of six years, and formal or informal child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department fails to provide such care; or (2) until June 30, 1999, if the recipient is a parent with a child under the age of one year. A parent may only receive this exemption for a total of twelve months, which may be consecutive or nonconsecutive; or (3) after June 30, 1999, if the recipient is a parent with a child under three months of age. [1997 c 58 § 314.]

**74.08A.280 Program goal—Collaboration to develop work programs—Contracts—Service areas—Regional plans.** (1) The legislature finds that moving those eligible for assistance to self-sustaining employment is a goal of the WorkFirst program. It is the intent of WorkFirst to aid a participant's progress to self-sufficiency by allowing flexibility within the state-wide program to reflect community resources, the local characteristics of the labor market, and the composition of the caseload. Program success will be enhanced through effective coordination at regional and local levels, involving employers, labor representatives, educators, community leaders, local governments, and social service providers.

(2) The department, through its regional offices, shall collaborate with employers, recipients, frontline workers, educational institutions, labor, private industry councils, the work force training and education coordinating board, community rehabilitation employment programs, employment and training agencies, local governments, the employment security department, and community action agencies to develop work programs that are effective and work in their communities. For planning purposes, the department shall collect and make accessible to regional offices successful work program models from around the United States, including the employment partnership program, apprenticeship programs, microcredit, microenterprise, self-employment, and W-2 Wisconsin works. Work programs shall incorporate local volunteer citizens in their planning and implementation phases to ensure community relevance and success.

(3) To reduce administrative costs and to ensure equal state-wide access to services, the department may develop contracts for state-wide welfare-to-work services. These state-wide contracts shall support regional flexibility and ensure that resources follow local labor market opportunities and recipients' needs.



(4) The secretary shall establish WorkFirst service areas for purposes of planning WorkFirst programs and for distributing WorkFirst resources. Service areas shall reflect department regions.

(5) By July 31st of each odd-numbered year, a plan for the WorkFirst program shall be developed for each region. The plan shall be prepared in consultation with local and regional sources, adapting the state-wide WorkFirst program to achieve maximum effect for the participants and the communities within which they reside. Local consultation shall include to the greatest extent possible input from local and regional planning bodies for social services and work force development. The regional and local administrator shall consult with employers of various sizes, labor representatives, training and education providers, program participants, economic development organizations, community organizations, tribes, and local governments in the preparation of the service area plan.

(6) The secretary has final authority in plan approval or modification. Regional program implementation may deviate from the state-wide program if specified in a service area plan, as approved by the secretary. [1997 c 58 § 315.]

**74.08A.290 Competitive performance-based contracting—Evaluation of contracting practices—Contracting strategies.** (1) It is the intent of the legislature that the department is authorized to engage in competitive contracting using performance-based contracts to provide all work activities authorized in chapter 58, Laws of 1997, including the job search component authorized in \*section 312 of this act.

(2) The department may use competitive performance-based contracting to select which vendors will participate in the WorkFirst program. Performance-based contracts shall be awarded based on factors that include but are not limited to the criteria listed in RCW 74.08A.410, past performance of the contractor, demonstrated ability to perform the contract effectively, financial strength of the contractor, and merits of the proposal for services submitted by the contractor. Contracts shall be made without regard to whether the contractor is a public or private entity.

(3) The department may contract for an evaluation of the competitive contracting practices and outcomes to be performed by an independent entity with expertise in government privatization and competitive strategies. The evaluation shall include quarterly progress reports to the fiscal committees of the legislature and to the governor, starting at the first quarter after the effective date of the first competitive contract and ending two years after the effective date of the first competitive contract.

(4) The department shall seek independent assistance in developing contracting strategies to implement this section. Assistance may include but is not limited to development of contract language, design of requests for proposal, developing full cost information on government services, evaluation of bids, and providing for equal competition between private and public entities. [1997 c 58 § 316.]

\*Reviser's note: Section 312 of this act was vetoed by the governor.

**74.08A.300 Placement bonuses.** In the case of service providers that are not public agencies, initial place-

ment bonuses of no greater than five hundred dollars may be provided by the department for service entities responsible for placing recipients in an unsubsidized job for a minimum of twelve weeks, and the following additional bonuses shall also be provided:

(1) A percent of the initial bonus if the job pays double the minimum wage;

(2) A percent of the initial bonus if the job provides health care;

(3) A percent of the initial bonus if the job includes employer-provided child care needed by the recipient; and

(4) A percent of the initial bonus if the recipient is continuously employed for two years. [1997 c 58 § 317.]

**74.08A.310 Self-employment assistance—Training and placement programs.** The department shall:

(1) Notify recipients of temporary assistance for needy families that self-employment is one method of leaving state assistance. The department shall provide its regional offices, recipients of temporary assistance for needy families, and any contractors providing job search, training, or placement services notification of programs available in the state for entrepreneurial training, technical assistance, and loans available for start-up businesses;

(2) Provide recipients of temporary assistance for needy families and service providers assisting such recipients through training and placement programs with information it receives about the skills and training required by firms locating in the state;

(3) Encourage recipients of temporary assistance for needy families that are in need of basic skills to seek out programs that integrate basic skills training with occupational training and workplace experience. [1997 c 58 § 324.]

**74.08A.320 Wage subsidy program.** The department shall establish a wage subsidy program for recipients of temporary assistance for needy families. The department shall give preference in job placements to private sector employers that have agreed to participate in the wage subsidy program. The department shall identify characteristics of employers who can meet the employment goals stated in RCW 74.08A.410. The department shall use these characteristics in identifying which employers may participate in the program. The department shall adopt rules for the participation of recipients of temporary assistance for needy families in the wage subsidy program. Participants in the program established under this section may not be employed if: (1) The employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its work force in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. Employers providing positions created under this section shall meet the requirements of chapter 49.46 RCW. This section shall not diminish or result in the infringement of obligations or rights under chapters 41.06, 41.56, and 49.36 RCW and the national labor relations act, 29 U.S.C. Ch. 7. The department shall establish such local and state-wide advisory boards, including business and labor representatives, as it deems appropriate to assist in the implementation of the wage subsidy program. Once the recipient is hired, the wage

subsidy shall be authorized for up to nine months. [1997 c 58 § 325.]

**74.08A.330 Community service program.** The department shall establish the community service program to provide the experience of work for recipients of public assistance. The program is intended to promote a strong work ethic for participating public assistance recipients. Under this program, public assistance recipients are required to volunteer to work for charitable nonprofit organizations and public agencies, or engage in another activity designed to benefit the recipient, the recipient's family, or the recipient's community, as determined by the department on a case-by-case basis. Participants in a community service or work experience program established by this chapter are deemed employees for the purpose of chapter 49.17 RCW. The cost of premiums under Title 51 RCW shall be paid for by the department for participants in a community service or work experience program. Participants in a community service or work experience program may not be placed if: (1) An employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its work force in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. [1997 c 58 § 326.]

**74.08A.340 Funding restrictions.** The department of social and health services shall operate the Washington WorkFirst program authorized under \*RCW 74.08A.200 through 74.08A.330, 43.330.145, 74.13.0903 and 74.25.040, and chapter 74.12 RCW within the following constraints:

(1) The full amount of the temporary assistance for needy families block grant, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the program authorized in \*RCW 74.08A.200 through 74.08A.330, 43.330.145, 74.13.0903 and 74.25.040, and chapter 74.12 RCW.

(2) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in RCW 74.08A.410. No more than fifteen percent of the amount provided in subsection (1) of this section may be spent for administrative purposes. For the purpose of this subsection, "administrative purposes" does not include expenditures for information technology and computerization needed for tracking and monitoring required by P.L. 104-193. The department shall not increase grant levels to recipients of the program authorized in \*\*RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW.

(3) The department shall implement strategies that accomplish the outcome measures identified in RCW 74.08A.410 that are within the funding constraints in this section. Specifically, the department shall implement strategies that will cause the number of cases in the program authorized in \*\*RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW to decrease by at least fifteen percent during the 1997-99 biennium and by at least five percent in the subsequent biennium. The department may transfer appropriation authority between funding

categories within the economic services program in order to carry out the requirements of this subsection.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. The department shall quarterly make a determination as to whether expenditure levels will exceed available funding and communicate its finding to the legislature. If the determination indicates that expenditures will exceed funding at the end of the fiscal year, the department shall take all necessary actions to ensure that all services provided under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [1997 c 58 § 321.]

**Reviser's note:** \*(1) Additional sections referenced in 1997 c 58 include sections 312, 318, and 402, which were vetoed by the governor; section 401, which is quoted after RCW 74.13.0903; and section 403, which is temporary and uncodified.

\*\* (2) Additional sections referenced in 1997 c 58 include sections 312 and 318, which were vetoed by the governor.

**74.08A.350 Questionnaires—Job opportunities for welfare recipients.** The department of social and health services shall create a questionnaire, asking businesses for information regarding available and upcoming job opportunities for welfare recipients. The department of revenue shall include the questionnaire in a regular quarterly mailing. The department of social and health services shall receive responses and use the information to develop work activities in the areas where jobs will be available. [1997 c 58 § 1007.]

**74.08A.380 Teen parents—Education requirements.** All applicants under the age of eighteen years who are approved for assistance and, within one hundred eighty days after the date of federal certification of the Washington temporary assistance for needy families program, all unmarried minor parents or pregnant minor applicants shall, as a condition of receiving benefits, actively progress toward the completion of a high school diploma or a GED. [1997 c 58 § 503.]

**74.08A.400 Outcome measures—Intent.** (*Effective January 1, 1998.*) It is the intent of the legislature that the Washington WorkFirst program focus on work and on personal responsibility for recipients. The program shall be evaluated among other evaluations, through a limited number of outcome measures designed to hold each community service office and economic services region accountable for program success. [1997 c 58 § 701.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.410 Outcome measures—Development—Benchmarks.** (*Effective January 1, 1998.*) (1) The WorkFirst program shall develop outcome measures for use in evaluating the WorkFirst program authorized in chapter 58, Laws of 1997, which may include but are not limited to:

- (a) Caseload reduction;
- (b) Recidivism to caseload after two years;
- (c) Job retention;
- (d) Earnings;
- (e) Reduction in average grant through increased recipient earnings; and

(f) Placement of recipients into private sector, unsubsidized jobs.

(2) The department shall require that contractors for WorkFirst services collect outcome measure information and report outcome measures to the department regularly. The department shall develop benchmarks that compare outcome measure information from all contractors to provide a clear indication of the most effective contractors. Benchmark information shall be published quarterly and provided to the legislature, the governor, and all contractors for WorkFirst services. [1997 c 58 § 702.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.420 Outcome measures—Evaluations—Awarding contracts—Bonuses.** (*Effective January 1, 1998.*) Every WorkFirst office, region, contract, employee, and contractor shall be evaluated using the criteria in RCW 74.08A.410. The department shall award contracts to the highest performing entities according to the criteria in RCW 74.08A.410. The department may provide for bonuses to offices, regions, and employees with the best outcomes according to measures in RCW 74.08A.410. [1997 c 58 § 703.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.430 Outcome measures—Report to legislature.** (*Effective January 1, 1998.*) The department shall provide a report to the appropriate committees of the legislature on achievement of the outcome measures by region and contract on an annual basis, no later than January 15th of each year, beginning in 1999. The report shall include how the department is using the outcome measure information obtained under RCW 74.08A.410 to manage the WorkFirst program. [1997 c 58 § 704.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.900 Short title—1997 c 58.** This act may be known and cited as the Washington WorkFirst temporary assistance for needy families act. [1997 c 58 § 2.]

**74.08A.901 Part headings, captions, table of contents not law—1997 c 58.** Part headings, captions, and the table of contents used in this act are not any part of the law. [1997 c 58 § 1008.]

**74.08A.902 Exemptions and waivers from federal law—1997 c 58.** The governor and the department of social and health services shall seek all necessary exemptions and waivers from and amendments to federal statutes, rules, and regulations and shall report to the appropriate committees in the house of representatives and senate quarterly on the efforts to secure the federal changes to permit full implementation of this act at the earliest possible date. [1997 c 58 § 1009.]

**74.08A.903 Conflict with federal requirements—1997 c 58.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the

conflict and with respect to the agencies directly affected, and this finding does 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 that are a necessary condition to the receipt of federal funds by the state. As used in this section, "allocation of federal funds to the state" means the allocation of federal funds that are appropriated by the legislature to the department of social and health services and on which the department depends for carrying out any provision of the operating budget applicable to it. [1997 c 58 § 1011.]

**74.08A.904 Severability—1997 c 58.** 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. [1997 c 58 § 1012.]

## Chapter 74.09 MEDICAL CARE

### Sections

- 74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights.
- 74.09.510 Medical assistance—Eligibility (*as amended by 1997 c 58*).
- 74.09.510 Medical assistance—Accordance with eligibility requirements—Ineligibility (*as amended by 1997 c 59*).
- 74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care.
- 74.09.5221 Medical assistance—Federal standards—Waivers—Application.

**74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights.** (1) 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 may furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the department shall thereby be subrogated to the recipient's rights against the recovery had from any tortfeasor or the tortfeasor's insurer, or both, and shall have a lien thereupon to the extent of the value of the assistance furnished by the department. To secure reimbursement for assistance provided under this section, the department may pursue its remedies under RCW 43.20B.060.

(2) The rights and remedies provided to the department in this section to secure reimbursement for assistance, including the department's lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the department to secure and recover assistance provided under a managed health care system consistent with its agreement with the department. [1997 c 236 § 1; 1990 c 100 § 2; 1987 c 283 § 14; 1979 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.]

**Application**—1990 c 100 §§ 2, 4, 7(1), 8(2): See note following RCW 43.20B.060.

**Severability—Savings**—1987 c 283: See notes following RCW 43.20A.020.

**Severability**—1979 ex.s. c 171: See note following RCW 74.20.300.

**74.09.510 Medical assistance—Eligibility (as amended by 1997 c 58).** Medical assistance may be provided in accordance with eligibility requirements established by the department ~~((of social and health services))~~, as defined in the social security Title XIX state plan for mandatory categorically needy persons and: (1) Individuals who would be eligible for cash assistance except for their institutional status; (2) individuals who are under twenty-one years of age, who would be eligible for ~~((aid to families with dependent children))~~ temporary assistance for needy families, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for the mentally retarded, or (d) inpatient psychiatric facilities; (3) the aged, blind, and disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized; (4) ~~categorically eligible individuals who ((would be eligible for but choose not to receive cash assistance))~~ meet the income and resource requirements of the cash assistance programs; (5) individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act; (6) children and pregnant women allowed by federal statute for whom funding is appropriated; ~~((and))~~ (7) other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act; and (8) persons allowed by section 1931 of the social security act for whom funding is appropriated. [1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability**—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

**74.09.510 Medical assistance—Accordance with eligibility requirements—Ineligibility (as amended by 1997 c 59).** Medical assistance may be provided in accordance with eligibility requirements established by the department of social and health services, as defined in the social security Title XIX state plan for mandatory categorically needy persons and: (1) Individuals who would be eligible for cash assistance except for their institutional status; (2) individuals who are under twenty-one years of age, who would be eligible for ~~((aid to families with dependent children))~~ medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for the mentally retarded, or (d) inpatient psychiatric facilities; (3) the aged, blind, and disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized; (4) individuals who would be eligible for but choose not to receive cash assistance; (5) individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act. [1997 c 59 § 14; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

**Reviser's note:** RCW 74.09.510 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Effective date**—1991 sp.s. c 8: See note following RCW 18.51.050.

**Effective dates**—1989 c 87: See notes following RCW 11.94.050.

**Severability**—1981 2nd ex.s. c 3: "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." [1981 2nd ex.s. c 3 § 8.]

**Effective date—Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

**74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care.** (1) For the purposes of this section, "managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under RCW 74.09.520 and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act.

(2) The department of social and health services shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients state-wide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the department may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the department shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the department by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the department under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e) In negotiating with managed health care systems the department shall adopt a uniform procedure to negotiate and enter into contractual arrangements, including standards regarding the quality of services to be provided; and financial integrity of the responding system;

(f) The department shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The department shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the department

may enter into prepaid capitation contracts that do not include inpatient care;

(h) The department shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services; and

(i) Nothing in this section prevents the department from entering into similar agreements for other groups of people eligible to receive services under this chapter.

(3) The department shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The department shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The department shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the department in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the department to the extent that minimum contracting requirements defined by the department are met, at payment rates that enable the department to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the department, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant

weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The department shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the department to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the department and contract bidders or the department and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document. In designing such procedures, the department shall give strong consideration to the negotiation and dispute resolution processes used by the Washington state health care authority in its managed health care contracting activities.

(6) The department may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate. [1997 c 59 § 15; 1997 c 34 § 1; 1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

**Reviser's note:** This section was amended by 1997 c 34 § 1 and by 1997 c 59 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 34:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 34 § 3.]

**Severability—1987 1st ex.s. c 5:** See note following RCW 70.47.901.

**Legislative findings—Intent—1986 c 303:** "(1) The legislature finds that:

(a) Good health care for indigent persons is of importance to the state;

(b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;

(c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;

(d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.

(2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both inpatient and out-patient services." [1986 c 303 § 1.]

**74.09.5221 Medical assistance—Federal standards—Waivers—Application.** To the extent that federal statutes or regulations, or provisions of waivers granted to the department of social and health services by the federal department of health and human services, include standards that differ from the minimums stated in \*sections 101 through 106, 109, and 111 of this act, those sections do not apply to contracts with health carriers awarded pursuant to RCW 74.09.522. [1997 c 231 § 112.]

**\*Reviser's note:** Sections 101 through 106, 109, and 111 of this act were vetoed by the governor.

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

## Chapter 74.12

## TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

(Formerly: Aid to families with dependent children)

## Sections

|           |   |
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| 74.12.410 | Family planning information—Cooperation with the superintendent of public instruction—Abstinence education and motivation programs, contracts—Legislative review and oversight of programs and contracts. |
| 74.12.420 | Repealed.   |
| 74.12.425 | Repealed.   |
| 74.12.900 | Welfare reform implementation—1994 c 299.   |

**74.12.010 Definitions.** For the purposes of the administration of temporary assistance for needy families, 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 living with a relative as specified under federal temporary assistance for needy families program requirements, 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 to the extent authorized by the legislature in the biennial appropriations act and to the extent that matching funds are available from the federal government, temporary assistance for needy families 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 support of the child.

"Temporary assistance for needy families" 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 another parent or stepparent of the dependent child if living with the parent and if 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. [1997 c 59 § 16; 1992 c 136 § 2; 1983 1st ex.s. c 41 § 40; 1981 1st ex.s. c 6 § 23; 1981 c 8 § 21; 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.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.12.030 Eligibility.** In addition to meeting the eligibility requirements of RCW 74.08.025, as now or hereafter amended, an applicant for temporary assistance for needy families must be a needy child who is a resident of the state of Washington. [1997 c 59 § 17; 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.]

**74.12.035 Additional eligibility requirements—Maximum monthly income—Participating in strike—Students.** (1) A family or assistance unit is not eligible for aid for any month if for that month the total income of the family or assistance unit, without application of income disregards, exceeds one hundred eighty-five percent of the state standard of need for a family of the same composition: PROVIDED, That for the purposes of determining the total income of the family or assistance unit, the earned income of a dependent child who is a full-time student for whom temporary assistance for needy families is being provided shall be disregarded for six months per calendar year.

(2) Participation in a strike does not constitute good cause to leave or to refuse to seek or accept employment. Assistance is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of the month, participating in a strike. An individual's need shall not be included in determining the amount of aid payable for any month to a family or assistance unit if, on the last day of the month, the individual is participating in a strike.

(3) Children over eighteen years of age and under nineteen years of age who are full-time students reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before reaching nineteen years of age are eligible to receive temporary assistance for needy families: PROVIDED HOWEVER, That if such students do not successfully complete such program before reaching nineteen years of age, the assistance rendered under this subsection during

such period shall not be a debt due the state. [1997 c 59 § 18; 1985 c 335 § 1; 1981 2nd ex.s. c 10 § 3.]

*State consolidated standards of need:* RCW 74.04.770.

**74.12.036 One hundred hour rule—Unemployed—Criteria in state plan.** The department shall amend the state plan to eliminate the one hundred hour work rule for recipients of temporary assistance for needy families. [1997 c 59 § 19; 1994 c 299 § 11.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

*One hundred hour standards:* WAC 388-215-1375.

**74.12.250 Payment of grant to another—Limited guardianship.** If the department, after investigation, finds that any applicant for assistance under this chapter or any recipient of funds under this chapter would not use, or is not utilizing, the grant adequately for the needs of his or her child or children or would dissipate the grant or is dissipating such grant, or would be or is unable to manage adequately the funds paid on behalf of said child and that to provide or continue payments to the applicant or recipient 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. [1997 c 58 § 506; 1963 c 228 § 21; 1961 c 206 § 1.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904

**74.12.255 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral.** (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and either pregnant or having a dependent child or children in the applicant's care. An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assistance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) An unmarried minor parent or pregnant minor applicant residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor and his or her children, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, make an affirmative effort to provide current and positive information about adoption including referral to community-based organizations for counseling and provide information about the manner in which adoption works, its benefits for unmarried, unemployed minor parents and their children, and the meaning and availability of open adoption.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [1997 c 58 § 501; 1994 c 299 § 33.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.



**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

*General assistance:* RCW 74.04.0052.

**74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children.** Temporary assistance for needy families 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 temporary assistance for needy families 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 a temporary assistance for needy families grant for the children represented in the grant are being spent for the benefit of the children. [1997 c 59 § 21; 1979 c 141 § 351; 1963 c 228 § 22.]

**74.12.280 Rules for coordination of services.** The department is hereby authorized to adopt rules that will provide for coordination between the services provided pursuant to chapter 74.13 RCW and the services provided under the temporary assistance for needy families 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). [1997 c 59 § 22; 1983 c 3 § 191; 1963 c 228 § 24.]

**74.12.361 Supplemental security income program—Enrollment of disabled persons.** The department shall actively develop mechanisms for the income assistance program, the medical assistance program, and the community services administration to facilitate the enrollment in the federal supplemental security income program of disabled persons currently part of assistance units receiving temporary assistance for needy families benefits. [1997 c 59 § 23; 1994 c 299 § 35.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**74.12.400 Reduce reliance on aid—Work and job training—Family planning—Staff training.** The department shall train financial services and social work staff who provide direct service to recipients of temporary assistance for needy families to:

- (1) Effectively communicate the transitional nature of temporary assistance for needy families and the expectation that recipients will enter employment;
- (2) Actively refer clients to the job opportunities and basic skills program;
- (3) Provide social services needed to overcome obstacles to employability; and
- (4) Provide family planning information and assistance, including alternatives to abortion, which shall be conducted in consultation with the department of health. [1997 c 59 § 24; 1994 c 299 § 2.]

**Intent—1994 c 299:** "The legislature finds that lengthy stays on welfare, lack of access to vocational education and training, the inadequate emphasis on employment by the social welfare system, and teen pregnancy

are obstacles to achieving economic independence. Therefore, the legislature intends that:

- (1) Income and employment assistance programs emphasize the temporary nature of welfare and set goals of responsibility, work, and independence;
- (2) State institutions take an active role in preventing pregnancy in young teens;
- (3) Family planning assistance be readily available to welfare recipients;
- (4) Support enforcement be more effective and the level of responsibility of noncustodial parents be significantly increased; and
- (5) Job search, job skills training, and vocational education resources are to be used in the most cost-effective manner possible." [1994 c 299 § 1.]

**Finding—1994 c 299:** "The legislature finds that the reliable receipt of child support payments by custodial parents is essential to maintaining economic self-sufficiency. It is the intent of the legislature to ensure that child support payments received by custodial parents when such support is owed are retained by those parents regardless of future claims made against such payments." [1994 c 299 § 17.]

**Severability—1994 c 299:** "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." [1994 c 299 § 40.]

**Conflict with federal requirements—1994 c 299:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does 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 that are a necessary condition to the receipt of federal funds by the state." [1994 c 299 § 41.]

**74.12.410 Family planning information—Cooperation with the superintendent of public instruction—Abstinence education and motivation programs, contracts—Legislative review and oversight of programs and contracts.** (1) At time of application or reassessment under this chapter the department shall offer or contract for family planning information and assistance, including alternatives to abortion, and any other available locally based teen pregnancy prevention programs, to prospective and current recipients of aid to families with dependent children.

(2) The department shall work in cooperation with the superintendent of public instruction to reduce the rate of illegitimate births and abortions in Washington state.

(3) The department of health shall maximize federal funding by timely application for federal funds available under P.L. 104-193 and Title V of the federal social security act, 42 U.S.C. 701 et seq., as amended, for the establishment of qualifying abstinence education and motivation programs. The department of health shall contract, by competitive bid, with entities qualified to provide abstinence education and motivation programs in the state.

(4) The department of health shall seek and accept local matching funds to the maximum extent allowable from qualified abstinence education and motivation programs.

(5)(a) For purposes of this section, "qualifying abstinence education and motivation programs" are those bidders with experience in the conduct of the types of abstinence education and motivation programs set forth in Title V of the federal social security act, 42 U.S.C. Sec. 701 et seq., as amended.

(b) The application for federal funds, contracting for abstinence education and motivation programs and performance of contracts under this section are subject to review

and oversight by a joint committee of the legislature, composed of four legislative members, appointed by each of the two caucuses in each house. [1997 c 58 § 601; 1994 c 299 § 3.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**74.12.420 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** RCW 74.12.420 was amended by 1997 c 59 § 26 without reference to its repeal by 1997 c 58 § 105. It has been decodified for publication purposes under RCW 1.12.025.

**74.12.425 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** RCW 74.12.425 was amended by 1997 c 59 § 27 without reference to its repeal by 1997 c 58 § 105. It has been decodified for publication purposes under RCW 1.12.025.

**74.12.900 Welfare reform implementation—1994 c 299.** The revisions to the temporary assistance for needy families program and job opportunities and basic skills training program shall be implemented by the department of social and health services on a state-wide basis. [1997 c 59 § 28; 1994 c 299 § 12.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

### Chapter 74.12A

## INCENTIVE TO WORK—ECONOMIC INDEPENDENCE

#### Sections

74.12A.020 Job support services—Grants to community action agencies or nonprofit organizations.

**74.12A.020 Job support services—Grants to community action agencies or nonprofit organizations.** The department shall provide grants to community action agencies or other local nonprofit organizations to provide job opportunities and basic skills training program participants with transitional support services, one-to-one assistance, case management, and job retention services. [1997 c 58 § 327; 1993 c 312 § 8.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Findings—Intent—1993 c 312:** "The legislature finds that:

(1) Public assistance is intended to be a temporary financial relief program, recognizing that families can be confronted with a financial crisis at any time in life. Successful public assistance programs depend on the availability of adequate resources to assist individuals deemed eligible for the benefits of such a program. In this way, eligible families are given sufficient assistance to reenter productive employment in a minimal time period.

(2) The current public assistance system requires a reduction in grant standards when income is received. In most cases, family income is limited to levels substantially below the standard of need. This is a strong disincentive to work. To remove this disincentive, the legislature intends

to allow families to retain a greater percentage of income before it results in the reduction or termination of benefits;

(3) Employment, training, and education services provided to employable recipients of public assistance are effective tools in achieving economic self-sufficiency. Support services that are targeted to the specific needs of the individual offer the best hope of achieving economic self-sufficiency in a cost-effective manner;

(4) State welfare-to-work programs, which move individuals from dependence to economic independence, must be operated cooperatively and collaboratively between state agencies and programs. They also must include public assistance recipients as active partners in self-sufficiency planning activities. Participants in economic independence programs and services will benefit from the concepts of personal empowerment, self-motivation, and self-esteem;

(5) Many barriers to economic independence are found in federal statutes and rules, and provide states with limited options for restructuring existing programs in order to create incentives for employment over continued dependence;

(6) The legislature finds that the personal and societal costs of teenage childbearing are substantial. Teen parents are less likely to finish high school and more likely to depend upon public assistance than women who delay childbearing until adulthood; and

(7) The legislature intends that an effort be made to ensure that each teenage parent who is a public assistance recipient live in a setting that increases the likelihood that the teen parent will complete high school and achieve economic independence." [1993 c 312 § 1.]

**Emergency—1993 c 312:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions." [1993 c 312 § 19.]

**Implementation program design—1993 c 312:** "The department of social and health services shall design a program for implementation involving recipients of aid to families with dependent children. A goal of this program is to develop a system that segments the aid to families with dependent children recipient population and identifies subgroups, matches services to the needs of the subgroup, and prioritizes available services. The department shall specify the services to be offered in each population segment. The general focus of the services offered shall be on job training, work force preparedness, and job retention.

The program shall be designed for state-wide implementation on July 1, 1994. A proposal for implementation may include phasing certain components over time or geographic area. The department shall submit this program to the appropriate committees of the senate and house of representatives by December 1, 1993." [1993 c 312 § 9.]

### Chapter 74.13

## CHILD WELFARE SERVICES

#### Sections

- 74.13.021 Developmentally disabled dependent child—Defined.
- 74.13.031 Duties of department—Child welfare services—Children's services advisory committee. (*Effective until January 1, 1998.*)
- 74.13.031 Duties of department—Child welfare services—Children's services advisory committee. (*Effective January 1, 1998.*)
- 74.13.037 Transitional living programs for youth in the process of being emancipated—Rules.
- 74.13.0903 Office of child care policy.
- 74.13.150 Adoption support reconsideration program.
- 74.13.152 Interstate agreements for adoption of children with special needs—Findings.
- 74.13.153 Interstate agreements for adoption of children with special needs—Purpose.
- 74.13.154 Interstate agreements for adoption of children with special needs—Definitions.
- 74.13.155 Interstate agreements for adoption of children with special needs—Authorization.
- 74.13.156 Interstate agreements for adoption of children with special needs—Required provisions.
- 74.13.157 Interstate agreements for adoption of children with special needs—Additional provisions.

- 74.13.158 Interstate agreements for adoption of children with special needs—Medical assistance for children residing in this state—Penalty for fraudulent claims.
- 74.13.159 Interstate agreements for adoption of children with special needs—Adoption assistance and medical assistance in state plan.
- 74.13.165 Home studies for adoption—Purchase of services from nonprofit agencies.
- 74.13.280 Client information.
- 74.13.285 Passports—Information to be provided to foster parents.
- 74.13.315 Child care for foster parents attending meetings or training.
- 74.13.325 Foster care and adoptive home recruitment program.
- 74.13.340 Foster parent liaison.
- 74.13.350 Developmentally disabled children—Out-of-home placement—Voluntary placement agreement.
- 74.13.500 Disclosure of child welfare records—Factors—Exception.
- 74.13.505 Disclosure of child welfare records—Information to be disclosed.
- 74.13.510 Disclosure of child welfare records—Consideration of effects.
- 74.13.515 Disclosure of child welfare records—Fatalities.
- 74.13.520 Disclosure of child welfare records—Information not to be disclosed.
- 74.13.525 Disclosure of child welfare records—Immunity from liability.

**74.13.021 Developmentally disabled dependent child—Defined.** As used in this chapter, "developmentally disabled dependent child" is a child who has a developmental disability as defined in RCW 71A.10.020 and whose parent, guardian, or legal custodian and with the department mutually agree that services appropriate to the child's needs can not be provided in the home. [1997 c 386 § 15.]

**74.13.031 Duties of department—Child welfare services—Children's services advisory committee.** (*Effective until January 1, 1998.*) The department shall have the duty to provide child welfare services 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) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, 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: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. 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, family reconciliation services 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 measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(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. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(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 children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 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. [1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9. Prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4;

1982 c 118 § 3; 1981 c 298 § 16; 1979 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—1997 c 272:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

**Effective date—1987 c 170 §§ 10 and 11:** "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

**Severability—1987 c 170:** See note following RCW 13.04.030.

**Severability—1981 c 298:** See note following RCW 13.32A.040.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**Severability—1967 c 172:** See note following RCW 74.15.010.

*Abuse of child or adult dependent person: Chapter 26.44 RCW.*

*Licensing of agencies caring for or placing children, expectant mothers, and developmentally disabled persons: Chapter 74.15 RCW.*

**74.13.031 Duties of department—Child welfare services—Children's services advisory committee.** (*Effective January 1, 1998.*) The department shall have the duty to provide child welfare services 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) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of alleged neglect, abuse, or abandonment of children, 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: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. 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, family reconciliation services 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 measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(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. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(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 children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 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. [1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9. Prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 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.]

**Reviser's note:** This section was amended by 1997 c 272 § 1 and by 1997 c 386 § 32, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**Effective date—1997 c 272:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

**Effective date—1987 c 170 §§ 10 and 11:** "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

**Severability—1987 c 170:** See note following RCW 13.04.030.

**Severability—1981 c 298:** See note following RCW 13.32A.040.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**Severability—1967 c 172:** See note following RCW 74.15.010.

*Abuse of child or adult dependent person: Chapter 26.44 RCW.*

*Licensing of agencies caring for or placing children, expectant mothers, and developmentally disabled persons: Chapter 74.15 RCW.*

**74.13.037 Transitional living programs for youth in the process of being emancipated—Rules.** Within available funds appropriated for this purpose, the department shall establish, by contracts with private vendors, transitional living programs for youth who are being assisted by the department in being emancipated as part of their permanency plan under chapter 13.34 RCW. These programs shall be licensed under rules adopted by the department. [1997 c 146 § 9; 1996 c 133 § 39.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**74.13.0903 Office of child care policy.** The office of child care policy is established to operate under the authority of the department of social and health services. The duties and responsibilities of the office include, but are not limited to, the following, within appropriated funds:

(1) Staff and assist the child care coordinating committee in the implementation of its duties under RCW 74.13.090;

(2) Work in conjunction with the state-wide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(3) Actively seek public and private money for distribution as grants to the state-wide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(4) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below household incomes of one hundred seventy-five percent of the federal poverty line;

(5) Provide staff support and technical assistance to the state-wide child care resource and referral network and local child care resource and referral organizations;

(6) Maintain a state-wide child care licensing data bank and work with department of social and health services licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(7) Through the state-wide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(8) Coordinate with the state-wide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers; and

(9) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services. [1997 c 58 § 404; 1993 c 453 § 2; 1991 sp.s. c 16 § 924; 1989 c 381 § 5.]

**Finding—1997 c 58:** "The legislature finds that informed choice is consistent with individual responsibility and that parents should be given a range of options for available child care while participating in the program." [1997 c 58 § 401.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Finding—1993 c 453:** "The legislature finds that building a system of quality, affordable child care requires coordinated efforts toward constructing partnerships at state and community levels. Through the office of child care policy, the department of social and health services is responsible for facilitating the coordination of child care efforts and establishing working partnerships among the affected entities within the public and private sectors. Through these collaborative efforts, the office of child care policy encouraged the coalition of locally based child care resource and referral agencies into a state-wide network. The state-wide network, in existence since 1989, supports the development and operation of community-based resource and referral programs, improves the quality and quantity of child care available in Washington by fostering state-wide strategies, and generates then nurtures effective public-private partnerships. The state-wide network provides important training, standards of service, and general technical assistance to its locally based child care resource and referral programs. The locally based programs enrich the availability, affordability, and quality of child care in their communities." [1993 c 453 § 1.]

**Effective date—1993 c 453:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 453 § 3.]

**Severability—Effective date—1991 sp.s. c 16:** See notes following RCW 9.46.100.

**Findings—Severability—1989 c 381:** See notes following RCW 74.13.085.

**74.13.150 Adoption support reconsideration program.** (1) The department of social and health services shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children

of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

(a) Was residing in a preadoptive placement funded by the department or in foster care funded by the department immediately prior to the adoptive placement;

(b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption or was at high risk of future physical or mental handicap or emotional disturbance as a result of conditions exposed to prior to the adoption; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2) of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child. [1997 c 131 § 1; 1990 c 285 § 5.]

**Findings—Purpose—Severability—1990 c 285:** See notes following RCW 74.04.005.

**74.13.152 Interstate agreements for adoption of children with special needs—Findings.** The legislature finds that:

(1) Finding adoptive families for children for whom state assistance under RCW 74.13.100 through 74.13.145 is desirable and assuring the protection of the interest of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state.

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states. [1997 c 31 § 1.]

**74.13.153 Interstate agreements for adoption of children with special needs—Purpose.** The purposes of RCW 74.13.152 through 74.13.159 are to:

(1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the department; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments. [1997 c 31 § 2.]

**74.13.154 Interstate agreements for adoption of children with special needs—Definitions.** The definitions in this section apply throughout RCW 74.13.152 through 74.13.159 unless the context clearly indicates otherwise.

(1) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(2) "Residence state" means the state where the child is living.

(3) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States. [1997 c 31 § 3.]

**74.13.155 Interstate agreements for adoption of children with special needs—Authorization.** The department is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in RCW 74.13.152 through 74.13.159. When entered into, and for so long as it remains in force, such a compact has the force and effect of law. [1997 c 31 § 4.]

**74.13.156 Interstate agreements for adoption of children with special needs—Required provisions.** A compact entered into pursuant to the authority conferred by RCW 74.13.152 through 74.13.159 must have the following content:

(1) A provision making it available for joinder by all states;

(2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement that is (a) in writing between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance, and (b) expressly for the benefit of the adopted child and

enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) Such other provisions as are appropriate to implement the proper administration of the compact. [1997 c 31 § 5.]

**74.13.157 Interstate agreements for adoption of children with special needs—Additional provisions.** A compact entered into pursuant to the authority conferred by RCW 74.13.152 through 74.13.159 may contain provisions in addition to those required under RCW 74.13.156, as follows:

(1) Provisions establishing procedures and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services; and

(2) Such other provisions as are appropriate or incidental to the proper administration of the compact. [1997 c 31 § 6.]

**74.13.158 Interstate agreements for adoption of children with special needs—Medical assistance for children residing in this state—Penalty for fraudulent claims.** (1) A child with special needs who resides in this state and is the subject of an adoption assistance agreement with another state is entitled to receive a medical assistance identification card from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the medical assistance administration, the adoptive parents are required at least annually to show that the agreement is still in force or has been renewed.

(2) The medical assistance administration shall consider the holder of a medical assistance identification under this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims in the same manner and under the same conditions and procedures as for other recipients of medical assistance.

(3) The medical assistance administration shall provide coverage and benefits for a child who is in another state and is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. Adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state for reimbursement. No reimbursement may be made for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided under this subsection must be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. The rules must include procedures to be followed in obtaining prior approval for services if required for the assistance.

(4) The submission of any claim for payment or reimbursement for services or benefits under this section or the making of any statement that the person knows or should know to be false, misleading, or fraudulent is punishable as perjury under chapter 9A.72 RCW.

(5) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provided medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance under an adoption assistance agreement entered into by this state are eligible to receive assistance in accordance with the applicable laws and procedures. [1997 c 31 § 7.]

**74.13.159 Interstate agreements for adoption of children with special needs—Adoption assistance and medical assistance in state plan.** Consistent with federal law, the department, in connection with the administration of RCW 74.13.152 through 74.13.158 and any pursuant compact shall include in any state plan made pursuant to the adoption assistance and child welfare act of 1980 (P.L. 96-272), Titles IV(e) and XIX of the social security act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law. [1997 c 31 § 8.]

**74.13.165 Home studies for adoption—Purchase of services from nonprofit agencies.** The secretary or the secretary's designee may purchase services from nonprofit agencies for the purpose of conducting home studies for legally free children who have been awaiting adoption finalization for more than ninety days. The home studies selected to be done under this section shall be for the children who have been legally free and awaiting adoption finalization the longest period of time. [1997 c 272 § 4.]

**Reviser's note:** 1997 c 272 directed that this section be added to chapter 43.20A RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 74.13 RCW.

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.280 Client information.** (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency shall, within available resources, share information about the child and the child's family with the care provider and shall, within available resources, consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law.

(3) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to



disclose client information or to maintain client confidentiality as provided by law. [1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.285 Passports—Information to be provided to foster parents.** (1) Within available resources, the department shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall be provided to a foster parent at any placement of a child covered by this section. The department shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements after July 1, 1997, shall have first priority in the preparation of passports. Within available resources, the department may prepare passports for any child in a foster home on July 1, 1997, provided that no time spent in a foster home before July 1, 1997, shall be included in the computation of the ninety days.

(2) In addition to the requirements of subsection (1) of this section, the department shall, within available resources, notify a foster parent before placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others. [1997 c 272 § 5.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.315 Child care for foster parents attending meetings or training.** The department may provide child care for all foster parents who are required to attend department-sponsored meetings or training sessions. If the department does not provide such child care, the department, where feasible, shall conduct the activities covered by this section in the foster parent's home or other location acceptable to the foster parent. [1997 c 272 § 6.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.325 Foster care and adoptive home recruitment program.** Within available resources, the department shall increase the number of adoptive and foster families available to accept children through an intensive recruitment and retention program. The department shall contract with a private agency to coordinate foster care and adoptive home recruitment activities for the department and private agencies. [1997 c 272 § 3.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.340 Foster parent liaison.** Within available resources, the department shall provide a foster parent liaison position in each department region. The department shall contract with a private nonprofit organization to provide the foster parent liaison function. The foster parent liaison shall enhance the working relationship between department case workers and foster parents. The foster parent liaison shall provide expedited assistance for the unique needs and

requirements posed by special needs foster children in out-of-home care. Any contract entered into under this section for a foster parent liaison shall include a requirement that the contractor substantially reduce the turnover rate of foster parents in the region by an agreed upon percentage. The department shall evaluate whether an organization that has a contract under this section has reduced the turnover rate by the agreed upon amount or more when determining whether to extend or renew a contract under this section. [1997 c 272 § 2.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.350 Developmentally disabled children—Out-of-home placement—Voluntary placement agreement.** It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.245. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the

best interests of the child. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter. [1997 c 386 § 16.]

**74.13.500 Disclosure of child welfare records—Factors—Exception.** (1) Consistent with the provisions of chapter 42.17 RCW and applicable federal law, the secretary, or the secretary's designee, shall disclose information regarding the abuse or neglect of a child, the investigation of the abuse or neglect, and any services related to the abuse or neglect of a child if any one of the following factors is present:

(a) The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained by the department in its case and management information system;

(b) The investigation of the abuse or neglect of the child by the department or the provision of services by the department has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a prosecuting attorney, any other state or local investigative agency or official, or by a judge of the superior court;

(c) There has been a prior knowing, voluntary public disclosure by an individual concerning a report of child abuse or neglect in which such individual is named as the subject of the report; or

(d) The child named in the report has died and the child's death resulted from abuse or neglect or the child was in the care of, or receiving services from the department at the time of death or within twelve months before death.

(2) The secretary is not required to disclose information if the factors in subsection (1) of this section are present if he or she specifically determines the disclosure is contrary to the best interests of the child, the child's siblings, or other children in the household.

(3) Except for cases in subsection (1)(d) of this section, requests for information under this section shall specifically identify the case about which information is sought and the facts that support a determination that one of the factors specified in subsection (1) of this section is present. [1997 c 305 § 2.]

**Conflict with federal requirements—1997 c 305:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the

agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 305 § 8.]

**74.13.505 Disclosure of child welfare records—Information to be disclosed.** For purposes of RCW 74.13.500, the following information shall be disclosable:

(1) The name of the abused or neglected child;

(2) The determination made by the department of the referrals, if any, for abuse or neglect;

(3) Identification of child protective or other services provided or actions, if any, taken regarding the child named in the report and his or her family as a result of any such report or reports. These records include but are not limited to administrative reports of fatality, fatality review reports, case files, inspection reports, and reports relating to social work practice issues; and

(4) Any actions taken by the department in response to reports of abuse or neglect of the child. [1997 c 305 § 3.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.510 Disclosure of child welfare records—Consideration of effects.** In determining under RCW 74.13.500 whether disclosure will be contrary to the best interests of the child, the secretary, or the secretary's designee, must consider the effects which disclosure may have on efforts to reunite and provide services to the family. [1997 c 305 § 4.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.515 Disclosure of child welfare records—Fatalities.** For purposes of RCW 74.13.500(1)(d), the secretary must make the fullest possible disclosure consistent with chapter 42.17 RCW and applicable federal law in cases of all fatalities of children who were in the care of, or receiving services from, the department at the time of their death or within the twelve months previous to their death.

If the secretary specifically determines that disclosure of the name of the deceased child is contrary to the best interests of the child's siblings or other children in the household, the secretary may remove personally identifying information.

For the purposes of this section, "personally identifying information" means the name, street address, social security number, and day of birth of the child who died and of private persons who are relatives of the child named in child welfare records. "Personally identifying information" shall not include the month or year of birth of the child who has died. Once this personally identifying information is removed, the remainder of the records pertaining to a child who has died must be released regardless of whether the remaining facts in the records are embarrassing to the unidentifiable other private parties or to identifiable public workers who handled the case. [1997 c 305 § 5.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.520 Disclosure of child welfare records—Information not to be disclosed.** Except as it applies directly to the cause of the abuse or neglect of the child and

any actions taken by the department in response to reports of abuse or neglect of the child, nothing in RCW 74.13.500 through 74.13.515 is deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials, or information pertaining to the child or the child's family. [1997 c 305 § 6.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.525 Disclosure of child welfare records—Immunity from liability.** The department, when acting in good faith, is immune from any criminal or civil liability, except as provided under RCW 42.17.340, for any action taken under RCW 74.13.500 through 74.13.520. [1997 c 305 § 7.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

## Chapter 74.14D

### ALTERNATIVE FAMILY-CENTERED SERVICES

#### Sections

74.14D.010 Alternative response system—Defined. (*Effective January 1, 1998, until July 1, 2005.*)

74.14D.020 Delivery of services—Contracts—Two or three model systems to be used. (*Effective January 1, 1998, until July 1, 2005.*)

74.14D.030 Data collection, evaluation. (*Effective January 1, 1998, until July 1, 2005.*)

74.14D.040 Court may order delivery of services. (*Effective January 1, 1998, until July 1, 2005.*)

74.14D.900 Expiration of chapter. (*Effective January 1, 1998, until July 1, 2005.*)

**74.14D.010 Alternative response system—Defined.** (*Effective January 1, 1998, until July 1, 2005.*) As used in this chapter, "alternative response system" means voluntary family-centered services that are: (1) Provided by an entity with which the department contracts; and (2) intended to increase the strengths and cohesiveness of families that the department determines present a low risk of child abuse or neglect. [1997 c 386 § 9.]

**Application—1997 c 386:** "\*\*Sections 8 through 14 and 17 through 34 of this act apply only to incidents occurring on or after January 1, 1998." [1997 c 386 § 67.]

**\*Reviser's note:** Sections 8 and 14 of this act were vetoed.

**Effective date—1997 c 386:** "\*\*Sections 8 through 13 and 21 through 34 of this act take effect January 1, 1998." [1997 c 386 § 68.]

**\*Reviser's note:** Section 8 of this act was vetoed.

**74.14D.020 Delivery of services—Contracts—Two or three model systems to be used.** (*Effective January 1, 1998, until July 1, 2005.*) (1) The department shall contract for delivery of services for at least two but not more than three models of alternative response systems. The services shall be reasonably available throughout the state but need not be sited in every county in the state, subject to such conditions and limitations as may be specified in the omnibus appropriations act.

(2) The systems shall provide delivery of services in the least intrusive manner reasonably likely to achieve improved family cohesiveness, prevention of rereferrals of the family

for alleged abuse or neglect, and improvement in the health and safety of children.

(3) The department shall identify and prioritize risk and protective factors associated with the type of abuse or neglect referrals that are appropriate for services delivered by alternative response systems. Contractors who provide services through an alternative response system shall use the factors in determining which services to deliver, consistent with the provisions of subsection (2) of this section.

(4) Consistent with the provisions of chapter 26.44 RCW, the providers of services under the alternative response system shall recognize the due process rights of families that receive such services and recognize that these services are not intended to be investigative for purposes of chapter 13.34 RCW. [1997 c 386 § 10.]

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**74.14D.030 Data collection, evaluation.** (*Effective January 1, 1998, until July 1, 2005.*) The department shall identify appropriate data to determine and evaluate outcomes of the services delivered by the alternative response systems. All contracts for delivery of alternative response system services shall include provisions and funding for data collection. [1997 c 386 § 11.]

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**74.14D.040 Court may order delivery of services.** (*Effective January 1, 1998, until July 1, 2005.*) (1) The court may, upon the entry of an order under this chapter, order the delivery of services through any appropriate public or private provider.

(2) This section may not be construed as allowing the court to require the department to pay for the cost of any services provided under this section. [1997 c 386 § 12.]

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**74.14D.900 Expiration of chapter.** (*Effective January 1, 1998, until July 1, 2005.*) This chapter expires July 1, 2005. [1997 c 386 § 13.]

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

## Chapter 74.15

### CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

#### Sections

74.15.020 Definitions.

74.15.030 Powers and duties of secretary. (*Effective January 1, 1998.*)

74.15.134 License or certificate suspension—Noncompliance with support order—Reissuance.

**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 persons with developmental disabilities 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 persons with developmental disabilities 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 persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, 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) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Family day-care provider" means a child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(f) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(g) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (4)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides

care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(f) 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;

(g) 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;

(h) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(i) 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;

(j) Licensed physicians or lawyers;

(k) 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;

(l) Facilities approved and certified under chapter 71A.22 RCW;

(m) 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;

(n) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(o) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(p) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been

issued a full license but is out of compliance with licensing standards. [1997 c 245 § 7. Prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

**Intent—1995 c 302:** See note following RCW 74.15.010.

**Severability—Effective date—1991 c 128:** See RCW 19.166.900 and 19.166.901

**Severability—1988 c 176:** See RCW 71A.10.900.

**Severability—1987 c 170:** See note following RCW 13.04.030.

**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.** (*Effective January 1, 1998.*) The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services 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 children's services 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. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use

the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(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 investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.060 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) 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;

(6) 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;

(7) 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;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child care coordinating committee and other affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) 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. [1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3. Prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**Intent—1995 c 302:** See note following RCW 74.15.010.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**74.15.134 License or certificate suspension—Noncompliance with support order—Reissuance.** The secretary shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the secretary's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 858.]

\***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 74.20

### SUPPORT OF DEPENDENT CHILDREN

#### Sections

- 74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules.
- 74.20.225 Subpoena authority—Enforcement.
- 74.20.320 Custodian to remit support moneys when department has support obligation—Noncompliance.
- 74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services.
- 74.20.360 Orders for genetic testing.

**74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules.** (1) Whenever the department receives an application for public assistance on behalf of a child, the department shall take appropriate action under the provisions of this chapter, chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys.

(2) The secretary may accept a request for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate

action to establish or enforce support obligations against the parent or other persons owing a duty to pay moneys. Requests accepted under this subsection may be conditioned upon the payment of a fee as required through regulation issued by the secretary. The secretary may establish by regulation, reasonable standards and qualifications for support enforcement services under this subsection.

(3) The secretary may accept requests for support enforcement services from child support enforcement agencies in other states operating child support programs under Title IV-D of the social security act or from foreign countries, and may take appropriate action to establish and enforce support obligations, or to enforce subpoenas, information requests, orders for genetic testing, and collection actions issued by the other agency against the parent or other person owing a duty to pay support moneys, the parent or other person's employer, or any other person or entity properly subject to child support collection or information-gathering processes. The request shall contain and be accompanied by such information and documentation as the secretary may by rule require, and be signed by an authorized representative of the agency. The secretary may adopt rules setting forth the duration and nature of services provided under this subsection.

(4) The department may take action to establish, enforce, and collect a support obligation, including performing related services, under this chapter and chapter 74.20A RCW, or through the attorney general or prosecuting attorney for action under chapter 26.09, 26.18, 26.20, 26.21, or 26.26 RCW or other appropriate statutes or the common law of this state.

(5) Whenever a support order is filed with the Washington state support registry under chapter 26.23 RCW, the department may take appropriate action under the provisions of this chapter, chapter 26.23 or 74.20A RCW, or other appropriate law of this state to establish or enforce the support obligations contained in that order against the responsible parent or other persons owing a duty to pay support moneys.

(6) The secretary may charge and collect a fee from the person obligated to pay support to compensate the department for services rendered in establishment of or enforcement of support obligations. This fee shall be limited to not more than ten percent of any support money collected as a result of action taken by the secretary. The fee charged shall be in addition to the support obligation. In no event may any moneys collected by the department from the person obligated to pay support be retained as satisfaction of fees charged until all current support obligations have been satisfied. The secretary shall by regulation establish reasonable fees for support enforcement services and said schedule of fees shall be made available to any person obligated to pay support. The secretary may, on showing of necessity, waive or defer any such fee.

(7) Fees, due and owing, may be collected as delinquent support moneys utilizing any of the remedies in chapter 74.20 RCW, chapter 74.20A RCW, chapter 26.21 RCW, or any other remedy at law or equity available to the department or any agencies with whom it has a cooperative or contractual arrangement to establish, enforce, or collect support moneys or support obligations.

(8) The secretary may waive the fee, or any portion thereof, as a part of a compromise of disputed claims or may grant partial or total charge off of said fee if the secretary finds there are no available, practical, or lawful means by which said fee may be collected or to facilitate payment of the amount of delinquent support moneys owed.

(9) The secretary shall adopt rules conforming to federal laws, rules, and regulations required to be observed in maintaining the state child support enforcement program required under Title IV-D of the federal social security act. The adoption of these rules shall be calculated to promote the cost-effective use of the agency's resources and not otherwise cause the agency to divert its resources from its essential functions. [1997 c 58 § 891; 1989 c 360 § 12; 1985 c 276 § 1; 1984 c 260 § 29; 1982 c 201 § 20; 1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1984 c 260:** See RCW 26.18.900.

**74.20.225 Subpoena authority—Enforcement.** In carrying out the provisions of this chapter or chapters 26.18, 26.23, 26.26, and 74.20A RCW, the secretary and other duly authorized officers of the department may subpoena witnesses, take testimony, and compel the production of such papers, books, records, and documents as they may deem relevant to the performance of their duties. The division of child support may enforce subpoenas issued under this power according to RCW 74.20A.350. [1997 c 58 § 898.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20.320 Custodian to remit support moneys when department has support obligation—Noncompliance.** 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 Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 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. [1997 c 58 § 935; 1979 ex.s. c 171 § 17.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services.** (1) Whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation 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 unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 shall:

(a) Operate as an assignment by operation of law; and

(b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services. [1997 c 58 § 936; 1989 c 360 § 13; 1988 c 275 § 19; 1985 c 276 § 3; 1979 ex.s. c 171 § 22.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.360 Orders for genetic testing.** (1) The division of child support may issue an order for genetic testing when providing services under this chapter and Title IV-D of the federal social security act if genetic testing:

(a) Is appropriate in an action under chapter 26.26 RCW, the uniform parentage act;

(b) Is appropriate in an action to establish support under RCW 74.20A.056; or

(c) Would assist the parties or the division of child support in determining whether it is appropriate to proceed with an action to establish or disestablish paternity.

(2) The order for genetic testing shall be served on the alleged parent or parents and the legal parent by personal service or by any form of mail requiring a return receipt.



(3) Within twenty days of the date of service of an order for genetic testing, any party required to appear for genetic testing, the child, or a guardian on the child's behalf, may petition in superior court under chapter 26.26 RCW to bar or postpone genetic testing.

(4) The order for genetic testing shall contain:

(a) An explanation of the right to proceed in superior court under subsection (3) of this section;

(b) Notice that if no one proceeds under subsection (3) of this section, the agency issuing the order will schedule genetic testing and will notify the parties of the time and place of testing by regular mail;

(c) Notice that the parties must keep the agency issuing the order for genetic testing informed of their residence address and that mailing a notice of time and place for genetic testing to the last known address of the parties by regular mail constitutes valid service of the notice of time and place;

(d) Notice that the order for genetic testing may be enforced through:

(i) Public assistance grant reduction for noncooperation, pursuant to agency rule, if the child and custodian are receiving public assistance;

(ii) Termination of support enforcement services under Title IV-D of the federal social security act if the child and custodian are not receiving public assistance;

(iii) A referral to superior court for an appropriate action under chapter 26.26 RCW; or

(iv) A referral to superior court for remedial sanctions under RCW 7.21.060.

(5) The department may advance the costs of genetic testing under this section.

(6) If an action is pending under chapter 26.26 RCW, a judgment for reimbursement of the cost of genetic testing may be awarded under RCW 26.26.100.

(7) If no action is pending in superior court, the department may impose an obligation to reimburse costs of genetic testing according to rules adopted by the department to implement RCW 74.20A.056. [1997 c 58 § 901.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.**

## Chapter 74.20A

### SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

#### Sections

- 74.20A.020 Definitions.
- 74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt.
- 74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions.
- 74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules.
- 74.20A.060 Assertion of lien—Effect.
- 74.20A.070 Service of lien.
- 74.20A.080 Order to withhold and deliver—Issuance and service—Contents—Effect—Duties of person served—Processing fee.
- 74.20A.100 Civil liability upon failure to comply with order or lien—Collection.

- 74.20A.240 Assignment of earnings to be honored—Effect—Processing fee.
- 74.20A.270 Department claim for support moneys—Notice—Answer—Adjudicative proceeding—Judicial review—Moneys not subject to claim.
- 74.20A.275 Support payments in possession of third parties—Collection.
- 74.20A.320 License suspension program—Noncompliance with a child support order—Certification of noncompliance—Notice, adjudicative proceeding—Stay of certification—Rules.
- 74.20A.330 License suspension—Agreements between department and licensing entities—Identification of responsible parents.
- 74.20A.340 License suspension program—Annual report. (*Expires December 2, 2002.*)
- 74.20A.350 Noncompliance—Notice—Fines—License suspension—Hearings—Rules.
- 74.20A.360 Records access—Confidentiality—Nonliability—Penalty for noncompliance.
- 74.20A.370 Financial institution data matches.

**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 and chapter 74.20 RCW 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, the secretary's designee or authorized representative.

(3) "Dependent child" means any person:

(a) Under the age of eighteen who is not self-supporting, married, or a member of the armed forces of the United States; or

(b) Over the age of eighteen for whom a court order for support exists.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation. For purposes of RCW 74.20A.055, orders for support which were entered under the uniform reciprocal enforcement of support act by a state where the responsible parent no longer resides shall not preclude the department from establishing an amount to be paid as current and future support.

(6) "Administrative order" means any determination, finding, decree, or order for support pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics.

(8) "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 until terminated as provided for in RCW 26.16.205.

(9) "Support moneys" means any moneys or in-kind providings 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.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(12) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(13) "Child support order" means a superior court order or an administrative order.

(14) "Financial institution" means:

(a) A depository institution, as defined in section 3(c) of the federal deposit insurance act;

(b) An institution-affiliated party, as defined in section 3(u) of the federal deposit insurance act;

(c) Any federal or state credit union, as defined in section 101 of the federal credit union act, including an institution-affiliated party of such credit union, as defined in section 206(r) of the federal deposit insurance act; or

(d) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity.

(15) "License" means a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity to a licensee evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle. "License" does not mean the tax registration or certification issued under Title 82 RCW by the department of revenue.

(16) "Licensee" means any individual holding a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle.

(17) "Licensing entity" includes any department, board, commission, or other organization authorized to issue, renew, suspend, or revoke a license authorizing an individual to engage in a business, occupation, profession, industry, recreational pursuit, or the operation of a motor vehicle, and includes the Washington state supreme court, to the extent that a rule has been adopted by the court to implement suspension of licenses related to the practice of law.

(18) "Noncompliance with a child support order" for the purposes of the license suspension program authorized under RCW 74.20A.320 means a responsible parent has:

(a) Accumulated arrears totaling more than six months of child support payments;

(b) Failed to make payments pursuant to a written agreement with the department towards a support arrearage in an amount that exceeds six months of payments; or

(c) Failed to make payments required by a superior court order or administrative order towards a support arrearage in an amount that exceeds six months of payments.

(19) "Noncompliance with a residential or visitation order" means that a court has found the parent in contempt of court under RCW 26.09.160(3) for failure to comply with a residential provision of a court-ordered parenting plan. [1997 c 58 § 805; 1990 1st ex.s. c 2 § 15. Prior: 1989 c 175 § 151; 1989 c 55 § 1; 1985 c 276 § 4; 1979 ex.s. c 171 § 3; 1971 ex.s. c 164 § 2.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**Birth certificate—Establishing paternity:** RCW 70.58.080.

#### **74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt.**

(1) 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 under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, 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 74.20A.055. Distribution of any support moneys shall be made in accordance with RCW 26.23.035.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from a residential habilitation center as defined by RCW 71A.10.020(7). For the period July 1,

1993, through June 30, 1995, a collection action may be taken against parents of children with developmental disabilities who are placed in community-based residential care. The amount of support the department may collect from the parents shall not exceed one-half of the parents' support obligation accrued while the child was in community-based residential care. The child support obligation shall be calculated pursuant to chapter 26.19 RCW. [1997 c 58 § 934; 1993 sp.s. c 24 § 926; 1989 c 360 § 14. Prior: 1988 c 275 § 20; 1988 c 176 § 913; 1987 c 435 § 31; 1985 c 276 § 5; 1984 c 260 § 40; 1979 ex.s. c 171 § 4; 1979 c 141 § 371; 1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.165.070.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**Severability—1988 c 176:** See RCW 71A.10.900.

**Effective date—1987 c 435:** See RCW 26.23.900.

**Severability—1984 c 260:** See RCW 26.18.900.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions.** (1) The secretary may, in the absence of a superior court order, or pursuant to an establishment of paternity under chapter 26.26 RCW, 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 an adjudicative proceeding 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. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department.

(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.

(3) 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. The notice and finding shall also include:

(a) A statement of the name of the recipient or custodian and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future;

(d) A statement that, if the responsible parent fails in timely fashion to file an application for an adjudicative proceeding, 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 and amounts due under the notice shall be subject to collection action;

(e) 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, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice.

(4) A responsible parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection. An adjudicative proceeding shall be held in the county of residence or other place convenient to the responsible parent.

(a) If the responsible parent files the application within twenty days, the department shall schedule an adjudicative proceeding to hear the parent's objection and determine the parents' support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If the responsible parent fails to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent files the application more than twenty days after, but within one year of the date of service, the department shall schedule an adjudicative proceeding to hear the parents' objection and determine the parent's support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent files the application more than one year after the date of service, the department shall schedule an adjudicative proceeding at which the responsible parent must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's

objection to the notice and determine the parent's support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The responsible parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer 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. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If the responsible parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an administrative 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.

(7) The final administrative order 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 administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer. [1997 c 58 § 940; 1996 c 21 § 1; 1991 c 367 § 46; 1990 1st ex.s. c 2 § 21; 1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**Effective date—1982 c 189:** See note following RCW 34.12.020.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules.** (1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him. Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) The alleged father may file an application for an adjudicative proceeding at which he will be required to appear and show cause why the amount stated in the finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If the alleged father does not request that a blood or genetic test be administered or file an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.060 that the parent-child relationship does not exist.

(2) An alleged father who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father who denies being a responsible parent may request that a blood or genetic test be administered at any time. The request for testing shall be in writing and served on the division of child support personally or by registered or certified mail. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of

such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under RCW 26.26.060 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father and the decision of the court is that the alleged father is a natural parent, the alleged father shall be liable for court costs incurred.

(7) If the alleged father does not request the division of child support to initiate a superior court action, or if the alleged father fails to appear and cooperate with blood or genetic testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.060.

(8)(a) If an alleged father has signed an affidavit acknowledging paternity that has been filed with the state registrar of vital statistics after July 1, 1997, within sixty days from the date of filing of the acknowledgment:

(i) The division of child support may serve a notice and finding of parental responsibility on him as set forth under this section; and

(ii) The alleged father or any other signatory may rescind his acknowledgment of paternity. The rescission shall be notarized and delivered to the state registrar of vital statistics personally or by registered or certified mail. The state registrar shall remove the father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate or any other name that the mother may select. The state registrar shall file rescission notices in a sealed file. All future paternity actions on behalf of the child in question shall be performed under court order.

(b) If the alleged father does not file an application for an adjudicative proceeding or rescind his acknowledgment of paternity, the amount of support stated in the notice and finding of parental responsibility becomes final, subject only to a subsequent determination under RCW 26.26.060 that the parent-child relationship does not exist.

(c) An alleged father who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

(d) If an alleged father makes a request for genetic testing, the department shall proceed as set forth under RCW 74.20.360.

(e) If the alleged father does not request an adjudicative proceeding, or if the alleged father fails to rescind his filed acknowledgment of paternity, the notice of parental responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.060.

(9) Affidavits acknowledging paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26 and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section. [1997 c 58 § 941. Prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

*Birth certificate—Establishing paternity:* RCW 70.58.080.

**74.20A.060 Assertion of lien—Effect.** (1) The secretary may assert a lien upon the real or personal property of a responsible parent:

(a) When a support payment is past due, if the parent's support order contains notice that liens may be enforced against real and personal property, or notice that action may be taken under this chapter;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055;

(d) Twenty-one days after service of a notice and finding of parental responsibility;

(e) Twenty-one days after service of a notice of support owed under RCW 26.23.110; or

(f) When appropriate under RCW 74.20A.270.

(2) The division of child support may use uniform interstate lien forms adopted by the United States department of health and human services to assert liens on a responsible parent's real and personal property located in another state.

(3) 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.

(4) 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) 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

(b) A determination has been made in an adjudicative proceeding 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. [1997 c 58 § 906. Prior: 1989 c 360 § 9; 1989 c 175 § 153; 1979 ex.s. c 171 § 5; 1973 1st ex.s. c 183 § 7; 1971 ex.s. c 164 § 6.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—1989 c 360 §§ 9, 10, 16, and 39:** "(1) Sections 9, 10, and 16 of this 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 [May 12, 1989].

(2) Section 39 of this act shall take effect July 1, 1990." [1989 c 360 § 43.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.070 Service of lien.** (1) The secretary may at any time after filing of a support lien serve a copy of the 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.

(2) The support lien shall be served upon the person, firm, corporation, association, political subdivision, or department of the state:

(a) In the manner prescribed for the service of summons in a civil action;

(b) By certified mail, return receipt requested; or

(c) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, or department of the state to accept service by electronic means.

(3) 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 the 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. [1997 c 130 § 6; 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—Issuance and service—Contents—Effect—Duties of person served—Processing fee.** (1) The secretary may issue to any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted

to earnings which are or might become 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, department of the state, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) At any time, if a responsible parent's support order:

(i) Contains notice that withholding action may be taken against earnings, wages, or assets without further notice to the parent; or

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount to be withheld on a periodic basis if the order to withhold and deliver is being served to secure payment of monthly current support;

(b) State the amount of the support debt accrued;

(c) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(d) Be served:

(i) In the manner prescribed for the service of a summons in a civil action;

(ii) By certified mail, return receipt requested; or

(iii) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means.

(3) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is owed money or property that is located in another state.

(4) Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) 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; and

(b) Provide further and additional answers when requested by the secretary.

(5) Any such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Immediately deliver the property to the secretary as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the secretary on the date earnings are payable to the debtor;

(iv) Deliver amounts withheld from periodic payments to the secretary on the date the payments are payable to the debtor;

(v) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(6) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the division of child support;

(b) Terminated by court order; or

(c) The person or entity receiving the order to withhold and deliver does not possess property of or owe money to the debtor for any period of twelve consecutive months following the date of service of the order to withhold and deliver.

(7) 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, or agency, subdivision, or instrumentality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

(8) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(9) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

(10) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

(11) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

(12) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed 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 judicial review. 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.

(13) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process.

(14) The division of child support shall notify any person, firm, corporation, association, or political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver. [1997 c 130 § 7; 1997 c 58 § 907; 1994 c 230 § 20. Prior: 1989 c 360 § 10; 1989 c 175 § 154; 1985 c 276 § 6; 1979 ex.s. c 171 § 6; 1973 1st ex.s. c 183 § 9; 1971 ex.s. c 164 § 8.]

**Reviser's note:** This section was amended by 1997 c 58 § 907 and by 1997 c 130 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2) For rule of construction, see RCW 1.12.025(1).

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—1989 c 360 §§ 9, 10, 16, and 39:** See note following RCW 74.20A.060.

**Effective date—1989 c 175:** See note following RCW 34.05.010

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.100 Civil liability upon failure to comply with order or lien—Collection.** (1) Any person, firm, corporation, association, political subdivision, or department of the state shall be liable to the department, or to the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act and issuing a notice, garnishment, or wage assignment attaching wages or earnings in satisfaction of a support obligation, in the amount that should have been withheld, together with costs, interest, and reasonable attorney fees if that person or entity:

(a) Fails to answer an order to withhold and deliver, or substantially similar action issued by the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act, within the time prescribed herein;

(b) Fails or refuses to deliver property pursuant to said order;

(c) After actual notice of filing of a support lien, pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien to or for the benefit of the debtor or any other person;

(d) Fails or refuses to surrender property distrained under RCW 74.20A.130 upon demand; or



(e) Fails or refuses to honor an assignment of earnings presented by the secretary.

(2) The secretary is authorized to issue a notice of noncompliance under RCW 74.20A.350 or to proceed in superior court to obtain a judgment for noncompliance under this section. [1997 c 296 § 15; 1997 c 58 § 895; 1989 c 360 § 5; 1985 c 276 § 7; 1973 1st ex.s. c 183 § 11; 1971 ex.s. c 164 § 10.]

**Reviser's note:** This section was amended by 1997 c 58 § 895 and by 1997 c 296 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.240 Assignment of earnings to be honored—Effect—Processing fee.** Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States 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. A person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the assignment of earnings under this chapter is not civilly liable to the debtor for complying with the assignment of earnings under this chapter. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

An assignment of earnings presented by the secretary in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process except for another wage assignment, garnishment, attachment, or other legal process for support moneys.

The employer may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would be exempt under RCW 74.20A.090. The processing fee shall not exceed fifteen dollars from the first disbursement to the department and one dollar for each subsequent disbursement under the assignment of earnings. [1997 c 296 § 16; 1994 c 230 § 21; 1985 c 276 § 12; 1973 1st ex.s. c 183 § 22; 1971 ex.s. c 164 § 24.]

**74.20A.270 Department claim for support moneys—Notice—Answer—Adjudicative proceeding—Judicial review—Moneys not subject to claim.** (1) The secretary may issue a notice of retained support or notice to recover a support payment to any person:

(a) 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;

(b) Who has received a support payment erroneously directed to the wrong payee, or issued by the department in error; or

(c) Who is in possession of a support payment obtained through the internal revenue service tax refund offset process, which payment was later reclaimed from the department by the internal revenue service as a result of an amended tax return filed by the obligor or the obligor's spouse.

(2) The notice shall state the legal basis for the claim and shall provide sufficient detail to enable the person to identify the support moneys in issue.

(3) The department shall serve the notice by certified mail, return receipt requested, or in the manner of a summons in a civil action.

(4) The amounts claimed in the notice shall become assessed, determined, and subject to collection twenty days from the date of service of the notice unless within those twenty days the person in possession of the support moneys:

(a) Acknowledges the department's right to the moneys and executes an agreed settlement providing for repayment of the moneys; or

(b) Requests an adjudicative proceeding to determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. The burden of proof to establish ownership of the support moneys claimed is on the department.

(5) After the twenty-day period, a person served with a notice under this section 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 an adjudicative proceeding 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 the final administrative order. Any such moneys held and/or taken by collection action after the date of any such stay shall be held by the department pending the final order, to be disbursed in accordance with the final order.

(6) If the debtor fails to attend or participate in the hearing or other stage of an adjudicative proceeding, the presiding officer shall, upon showing of valid service, enter an order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action.

(7) The department may take action to collect an obligation established under this section using any remedy available under this chapter or chapter 26.09, 26.18, 26.23, or 74.20 RCW for the collection of child support.

(8) 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 an adjudicative proceeding, the judgment shall supersede the final administrative order. The department may take action pursuant to chapter 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.

(9) If a person owing a debt established under this section is receiving public assistance, the department may collect the debt by offsetting up to ten percent of the grant payment received by the person. No collection action may be taken against the earnings of a person receiving cash public assistance to collect a debt assessed under this section.

(10) Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected under this section. [1997 c 58 § 896. Prior: 1989 c 360 § 35; 1989 c 175 § 156; 1985 c 276 § 14; 1984 c 260 § 41; 1979 ex.s. c 171 § 18.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1984 c 260:** See RCW 26.18.900.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.275 Support payments in possession of third parties—Collection.** (1) If a person or entity not entitled to child support payments wrongfully or negligently retains child support payments owed to another or to the Washington state support registry, those payments retain their character as child support payments and may be collected by the division of child support using any remedy available to the division of child support under Washington law for the collection of child support.

(2) Child support moneys subject to collection under this section may be collected for the duration of the statute of limitations as it applies to the support order governing the support obligations, and any legislative or judicial extensions thereto.

(3) This section applies to the following:

(a) Cases in which an employer or other entity obligated to withhold child support payments from the parent's pay, bank, or escrow account, or from any other asset or distribution of money to the parent, has withheld those payments and failed to remit them to the payee;

(b) Cases in which child support moneys have been paid to the wrong person or entity in error;

(c) Cases in which child support recipients have retained child support payments in violation of a child support assignment executed or arising by operation of law in exchange for the receipt of public assistance; and

(d) Any other case in which child support payments are retained by a party not entitled to them.

(4) This section does not apply to fines levied under RCW 74.20A.350(3)(b). [1997 c 58 § 892.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.320 License suspension program—Noncompliance with a child support order—Certification of noncompliance—Notice, adjudicative proceeding—Stay of certification—Rules.** (1) The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name

to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order. The department shall attach a copy of the responsible parent's child support order to the notice. Service of the notice must be by certified mail, return receipt requested. If service by certified mail is not successful, service shall be by personal service.

(2) The notice of noncompliance must include the address and telephone number of the department's division of child support office that issues the notice and must inform the responsible parent that:

(a) The parent may request an adjudicative proceeding to contest the issue of compliance with the child support order. The only issues that may be considered at the adjudicative proceeding are whether the parent is required to pay child support under a child support order and whether the parent is in compliance with that order;

(b) A request for an adjudicative proceeding shall be in writing and must be received by the department within twenty days of the date of service of the notice;

(c) If the parent requests an adjudicative proceeding within twenty days of service, the department will stay action to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support order pending entry of a written decision after the adjudicative proceeding;

(d) If the parent does not request an adjudicative proceeding within twenty days of service and remains in noncompliance with a child support order, the department will certify the parent's name to the department of licensing and any appropriate licensing entity for noncompliance with a child support order;

(e) The department will stay action to certify the parent to the department of licensing and any licensing entity for noncompliance if the parent agrees to make timely payments of current support and agrees to a reasonable payment schedule for payment of the arrears. It is the parent's responsibility to contact in person or by mail the department's division of child support office indicated on the notice within twenty days of service of the notice to arrange for a payment schedule. The department may stay certification for up to thirty days after contact from a parent to arrange for a payment schedule;

(f) If the department certifies the responsible parent to the department of licensing and a licensing entity for noncompliance with a child support order, the licensing entity will suspend or not renew the parent's license and the department of licensing will suspend or not renew any driver's license that the parent holds until the parent provides the department of licensing and the licensing entity with a release from the department stating that the responsible parent is in compliance with the child support order;

(g) If the department certifies the responsible parent as a person who is in noncompliance with a child support order, the department of fish and wildlife will suspend the fishing license, hunting license, commercial fishing license, or any other license issued under chapters 77.32, 77.28 [75.28], and 75.25 RCW that the responsible parent may possess. Notice from the department of licensing that a responsible parent's driver's license has been suspended shall serve as notice of the suspension of a license issued under chapters 77.32 and 75.25 RCW;

(h) Suspension of a license will affect insurability if the responsible parent's insurance policy excludes coverage for acts occurring after the suspension of a license;

(i) If after receiving the notice of noncompliance with a child support order, the responsible parent files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, or if a motion for modification of a court or administrative order for child support is pending, the department or the court may stay action to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support order. A stay shall not exceed six months unless the department finds good cause. The responsible parent has the obligation to notify the department that a modification proceeding is pending and provide a copy of the motion or request for modification; and

(j) If the responsible parent subsequently becomes in compliance with the child support order, the department will promptly provide the parent with a release stating that the parent is in compliance with the order, and the parent may request that the licensing entity or the department of licensing reinstate the suspended license.

(3) A responsible parent may request an adjudicative proceeding upon service of the notice described in subsection (1) of this section. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent. The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW. The issues that may be considered at the adjudicative proceeding are limited to whether:

(a) The person named as the responsible parent is the responsible parent;

(b) The responsible parent is required to pay child support under a child support order; and

(c) The responsible parent is in compliance with the order.

(4) The decision resulting from the adjudicative proceeding must be in writing and inform the responsible parent of his or her rights to review. The parent's copy of the decision may be sent by regular mail to the parent's most recent address of record.

(5) If a responsible parent contacts the department's division of child support office indicated on the notice of noncompliance within twenty days of service of the notice and requests arrangement of a payment schedule, the department shall stay the certification of noncompliance during negotiation of the schedule for payment of arrears. In no event shall the stay continue for more than thirty days from the date of contact by the parent. The department shall establish a schedule for payment of arrears that is fair and reasonable, and that considers the financial situation of the responsible parent and the needs of all children who rely on the responsible parent for support. At the end of the thirty days, if no payment schedule has been agreed to in writing and the department has acted in good faith, the department shall proceed with certification of noncompliance.

(6) If a responsible parent timely requests an adjudicative proceeding pursuant to subsection (4) of this section, the department may not certify the name of the parent to the department of licensing or a licensing entity for noncompliance with a child support order unless the adjudicative proceeding results in a finding that the responsible parent is not in compliance with the order.

(7) The department may certify to the department of licensing and any appropriate licensing entity the name of a responsible parent who is not in compliance with a child support order or a residential or visitation order if:

(a) The responsible parent does not timely request an adjudicative proceeding upon service of a notice issued under subsection (1) of this section and is not in compliance with a child support order twenty-one days after service of the notice;

(b) An adjudicative proceeding results in a decision that the responsible parent is not in compliance with a child support order;

(c) The court enters a judgment on a petition for judicial review that finds the responsible parent is not in compliance with a child support order;

(d) The department and the responsible parent have been unable to agree on a fair and reasonable schedule of payment of the arrears;

(e) The responsible parent fails to comply with a payment schedule established pursuant to subsection (5) of this section; or

\*The department shall send by regular mail a copy of any certification of noncompliance filed with the department of licensing or a licensing entity to the responsible parent at the responsible parent's most recent address of record.

(8) The department of licensing and a licensing entity shall, without undue delay, notify a responsible parent certified by the department under subsection (7) of this section that the parent's driver's license or other license has been suspended because the parent's name has been certified by the department as a responsible parent who is not in compliance with a child support order or a residential or visitation order.

(9) When a responsible parent who is served notice under subsection (1) of this section subsequently complies with the child support order, or when the department receives a court order under \*\*section 886 of this act stating that the parent is in compliance with a residential or visitation order, the department shall promptly provide the parent with a release stating that the responsible parent is in compliance with the order. A copy of the release shall be transmitted by the department to the appropriate licensing entities.

(10) The department may adopt rules to implement and enforce the requirements of this section. The department shall deliver a copy of rules adopted to implement and enforce this section to the legislature by June 30, 1998.

(11) Nothing in this section prohibits a responsible parent from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. If there is a reasonable likelihood that a pending motion or request will significantly change the amount of the child support obligation, the department or the court may stay action to

certify the responsible parent to the department of licensing and any licensing entity for noncompliance with a child support order. A stay shall not exceed six months unless the department finds good cause to extend the stay. The responsible parent has the obligation to notify the department that a modification proceeding is pending and provide a copy of the motion or request for modification.

(12) The department of licensing and a licensing entity may renew, reinstate, or otherwise extend a license in accordance with the licensing entity's or the department of licensing's rules after the licensing entity or the department of licensing receives a copy of the release specified in subsection (9) of this section. The department of licensing and a licensing entity may waive any applicable requirement for reissuance, renewal, or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest.

(13) The procedures in chapter 58, Laws of 1997, constitute the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order and suspension of a license under this section, and satisfy the requirements of RCW 34.05.422. [1997 c 58 § 802.]

**Reviser's note:** \*(1) Subsection (7)(f) of this section was vetoed by the governor. The vetoed language is as follows:

"(f) The department is ordered to certify the responsible parent by a court order under section 887 of this act."

\*\* (2) Section 886 of this act was vetoed by the governor.

**Effective dates—1997 c 58:** \*(2) Sections 801 through 887, 889, and 890 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997.

(3) Sections 701 through 704 of this act take effect January 1, 1998.

(4) Section 944 of this act takes effect October 1, 1998. [1997 c 58 § 1013.]

**\*Reviser's note:** Subsection (1) of this section was vetoed by the governor. The vetoed language is as follows:

"(1) Sections 1, 2, 101 through 110, 201 through 207, 301 through 329, 401 through 404, 501 through 506, 601, 705, 706, 888, 891 through 943, 945 through 948, and 1002 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

**Intent—1997 c 58:** "It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.

In the implementation and management of this program, it is the legislature's intent that the objective of the department of social and health services be to obtain payment in full of arrears, or where that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order." [1997 c 58 § 801.]

**Suspension of hunting, fishing, and recreational licenses by department of fish and wildlife—Implementation plan:** "(1) The director of the department of fish and wildlife and the director of the department of information services shall jointly develop a comprehensive, state-wide implementation plan for the automated issuance, revocation, and general administration of hunting, fishing, and recreational licenses administered under the authority of the department of fish and wildlife to ensure

compliance with the license suspension requirements in section 802 of this act.

(2) The plan shall detail the implementation steps necessary to effectuate the automated administration of hunting, fishing, and recreational licenses and shall include recommendations regarding all costs and equipment associated with the plan.

(3) The plan shall be submitted to the legislature for review by September 1, 1997." [1997 c 58 § 885.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.330 License suspension—Agreements between department and licensing entities—Identification of responsible parents.** (1) The department and all of the various licensing entities subject to RCW 74.20A.320 shall enter into such agreements as are necessary to carry out the requirements of the license suspension program established in RCW 74.20A.320.

(2) The department and all licensing entities subject to RCW 74.20A.320 shall compare data to identify responsible parents who may be subject to the provisions of chapter 58, Laws of 1997. The comparison may be conducted electronically, or by any other means that is jointly agreeable between the department and the particular licensing entity. The data shared shall be limited to those items necessary to [for] implementation of chapter 58, Laws of 1997. The purpose of the comparison shall be to identify current licensees who are not in compliance with a child support order, and to provide to the department the following information regarding those licensees:

- (a) Name;
- (b) Date of birth;
- (c) Address of record;
- (d) Federal employer identification number and social security number;
- (e) Type of license;
- (f) Effective date of license or renewal;
- (g) Expiration date of license; and
- (h) Active or inactive status. [1997 c 58 § 803.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**74.20A.340 License suspension program—Annual report. (Expires December 2, 2002.)** (1) In furtherance of the public policy of increasing collection of child support and to assist in evaluation of the program established in RCW 74.20A.320, the department shall report the following to the legislature and the governor on December 1, 1998, and annually thereafter:

- (a) The number of responsible parents identified as licensees subject to RCW 74.20A.320;
- (b) The number of responsible parents identified by the department as not in compliance with a child support order;
- (c) The number of notices of noncompliance served upon responsible parents by the department;
- (d) The number of responsible parents served a notice of noncompliance who request an adjudicative proceeding;

(e) The number of adjudicative proceedings held, and the results of the adjudicative proceedings;

(f) The number of responsible parents certified to the department of licensing or licensing entities for noncompliance with a child support order, and the number of each type of licenses that were suspended;

(g) The costs incurred in the implementation and enforcement of RCW 74.20A.320 and an estimate of the amount of child support collected due to the department under RCW 74.20A.320;

(h) Any other information regarding this program that the department feels will assist in evaluation of the program;

(i) Recommendations for the addition of specific licenses in the program or exclusion of specific licenses from the program, and reasons for such recommendations; and

(j) Any recommendations for statutory changes necessary for the cost-effective management of the program.

(2) To assist in evaluation of the program established in RCW 74.20A.320, the office of the administrator for the courts shall report the following to the legislature and the governor on December 1, 1998, and annually thereafter:

(a) The number of motions for contempt for violation of a visitation or residential order filed under RCW 26.09.160(3);

(b) The number of parents found in contempt under RCW 26.09.160(3); and

(c) The number of parents whose licenses were suspended under \*RCW 26.09.160(3).

(3) This section expires December 2, 2002. [1997 c 58 § 804.]

**\*Reviser's note:** Provisions added to RCW 26.09.160(3) by 1997 c 58 § 887, authorizing certification of noncompliance with a residential or visitation order that would permit license suspension, were vetoed.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**74.20A.350 Noncompliance—Notice—Fines—License suspension—Hearings—Rules.** (1) The division of child support may issue a notice of noncompliance to any person, firm, entity, or agency of state or federal government that the division believes is not complying with:

(a) A notice of payroll deduction issued under chapter 26.23 RCW;

(b) A lien, order to withhold and deliver, or assignment of earnings issued under this chapter;

(c) Any other wage assignment, garnishment, attachment, or withholding instrument properly served by the agency or firm providing child support enforcement services for another state, under Title IV-D of the federal social security act;

(d) A subpoena issued by the division of child support, or the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act;

(e) An information request issued by the division of child support, or the agency or firm providing child support enforcement for another state under Title IV-D of the federal

social security act, to an employer or entity required to respond to such requests under RCW 74.20A.360; or

(f) The duty to report newly hired employees imposed by RCW 26.23.040.

(2) Liability for noncompliance with a wage withholding, garnishment, order to withhold and deliver, or any other lien or attachment issued to secure payment of child support is governed by RCW 26.23.090 and 74.20A.100, except that liability for noncompliance with remittance time frames is governed by subsection (3) of this section.

(3) The division of child support may impose fines of up to one hundred dollars per occurrence for:

(a) Noncompliance with a subpoena or an information request issued by the division of child support, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act;

(b) Noncompliance with the required time frames for remitting withheld support moneys to the Washington state support registry, or the agency or firm providing child support enforcement services for another state, except that no liability shall be established for failure to make timely remittance unless the division of child support has provided the person, firm, entity, or agency of state or federal government with written warning:

(i) Explaining the duty to remit withheld payments promptly;

(ii) Explaining the potential for fines for delayed submission; and

(iii) Providing a contact person within the division of child support with whom the person, firm, entity, or agency of state or federal government may seek assistance with child support withholding issues.

(4) The division of child support may assess fines according to RCW 26.23.040 for failure to comply with employer reporting requirements.

(5) The division of child support may suspend licenses for failure to comply with a subpoena issued under RCW 74.20.225.

(6) The division of child support may serve a notice of noncompliance by personal service or by any method of mailing requiring a return receipt.

(7) The liability asserted by the division of child support in the notice of noncompliance becomes final and collectible on the twenty-first day after the date of service, unless within that time the person, firm, entity, or agency of state or federal government:

(a) Initiates an action in superior court to contest the notice of noncompliance;

(b) Requests a hearing by delivering a hearing request to the division of child support in accordance with rules adopted by the secretary under this section; or

(c) Contacts the division of child support and negotiates an alternate resolution to the asserted noncompliance or demonstrates that the person, firm, entity, or agency of state or federal government has complied with the child support processes.

(8) The notice of noncompliance shall contain:

(a) A full and fair disclosure of the rights and obligations created by this section; and

(b) Identification of the:

(i) Child support process with respect to which the division of child support is alleging noncompliance; and

(ii) State child support enforcement agency issuing the original child support process.

(9) In an administrative hearing convened under subsection (7)(b) of this section, the presiding officer shall determine whether or not, and to what extent, liability for noncompliance exists under this section, and shall enter an order containing these findings. If liability does exist, the presiding officer shall include language in the order advising the parties to the proceeding that the liability may be collected by any means available to the division of child support under subsection (12) of this section without further notice to the liable party.

(10) Hearings under this section are governed by the administrative procedure act, chapter 34.05 RCW.

(11) After the twenty days following service of the notice, the person, firm, entity, or agency of state or federal government may petition for a late hearing. A petition for a late hearing does not stay any collection action to recover the debt. A late hearing is available upon a showing of any of the grounds stated in civil rule 60 for the vacation of orders.

(12) The division of child support may collect any obligation established under this section using any of the remedies available under chapter 26.09, 26.18, 26.21, 26.23, 74.20, or 74.20A RCW for the collection of child support.

(13) The division of child support may enter agreements for the repayment of obligations under this section. Agreements may:

(a) Suspend the obligation imposed by this section conditioned on future compliance with child support processes. Such suspension shall end automatically upon any failure to comply with a child support process. Amounts suspended become fully collectible without further notice automatically upon failure to comply with a child support process;

(b) Resolve amounts due under this section and provide for repayment.

(14) The secretary may adopt rules to implement this section. [1997 c 58 § 893.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.360 Records access—Confidentiality—Nonliability—Penalty for noncompliance.** (1) Notwithstanding any other provision of Washington law, the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act may access records of the following nature, in the possession of any agency or entity listed in this section:

(a) Records of state and local agencies, including but not limited to:

(i) The state registrar, including but not limited to records of birth, marriage, and death;

(ii) Tax and revenue records, including, but not limited to, information on residence addresses, employers, and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational, professional, and recreational licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance programs; and

(vii) Records of the department of corrections, and of county and municipal correction or confinement facilities;

(b) Records of public utilities and cable television companies relating to persons who owe or are owed support, or against whom a support obligation is sought, including names and addresses of the individuals, and employers' names and addresses pursuant to RCW 74.20.225 and RCW 74.20A.120; and

(c) Records held by financial institutions, pursuant to RCW 74.20A.370.

(2) Upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the social security act, any employer shall provide information as to the employment, earnings, benefits, and residential address and phone number of any employee.

(3) Entities in possession of records described in subsection (1)(a) and (c) of this section must provide information and records upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act. The division of child support may enter into agreements providing for electronic access to these records.

(4) Public utilities and cable television companies must provide the information in response to a judicial or administrative subpoena issued by the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act.

(5) Entities responding to information requests and subpoenas under this section are not liable for disclosing information pursuant to the request or subpoena.

(6) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120.

(7) The division of child support may impose fines for noncompliance with this section using the notice of noncompliance under RCW 74.20A.350. [1997 c 58 § 897.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.370 Financial institution data matches.** (1) Each calendar quarter financial institutions doing business in the state of Washington shall report to the department the name, record address, social security number or other taxpayer identification number, and other information determined necessary by the department for each individual

who maintains an account at such institution and is identified by the department as owing a support debt.

(2) The department and financial institutions shall enter into agreements to develop and operate a data match system, using automated data exchanges to the extent feasible, to minimize the cost of providing information required under subsection (1) of this section.

(3) The department may pay a reasonable fee to a financial institution for conducting the data match not to exceed the actual costs incurred.

(4) A financial institution is not liable for any disclosure of information to the department under this section.

(5) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120. [1997 c 58 § 899.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

## Chapter 74.25

### JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

#### Sections

|           |   |
|-----------|---|
| 74.25.010 | Repealed.   |
| 74.25.020 | Repealed.   |
| 74.25.030 | Repealed.   |
| 74.25.040 | Volunteer work—Child care or other work—Training. |
| 74.25.900 | Repealed.   |
| 74.25.901 | Repealed.   |

**74.25.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** RCW 74.25.010 was amended by 1997 c 59 § 29 without reference to its repeal by 1997 c 58 § 322. It has been decodified for publication purposes under RCW 1.12.025.

**74.25.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.25.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.25.040 Volunteer work—Child care or other work—Training.** (1) Recipients of temporary assistance for needy families who are employed or participating in a work activity under \*section 312 of this act may volunteer or work in a licensed child care facility. Licensed child care facilities participating in this effort shall provide care for the recipient's children and provide for the development of positive child care skills.

(2) The department shall train two hundred fifty recipients of temporary assistance for needy families to become family child care providers or child care center teachers. The department shall offer the training in rural and urban communities. The department shall adopt rules to implement the child care training program in this section.

(3) Recipients trained under this section shall provide child care services to clients of the department for two years

following the completion of their child care training. [1997 c 59 § 30; 1997 c 58 § 405; 1994 c 299 § 8.]

**Reviser's note:** \*(1) Section 312 of this act was vetoed by the governor.

(2) This section was amended by 1997 c 58 § 405 and by 1997 c 59 § 30, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—1997 c 58:** See note following RCW 74.13.0903.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**74.25.900 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.25.901 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 74.25A

### EMPLOYMENT PARTNERSHIP PROGRAM

#### Sections

|            |   |
|------------|---|
| 74.25A.045 | Local employment partnership council.                     |
| 74.25A.050 | Program participants—Eligibility for assistance programs. |

**74.25A.045 Local employment partnership council.** A local employment partnership council shall be established in each pilot project area to assist the department of social and health services in the administration of this chapter and to allow local flexibility in dealing with the particular needs of each pilot project area. Each council shall be primarily responsible for recruiting and encouraging participation of employment providers in the project site. Each council shall be composed of nine members who shall be appointed by the county legislative authority of the county in which the pilot project operates. Councilmembers shall be residents of or employers in the pilot project area in which they are appointed and shall serve three-year terms. The council shall have two members who are current or former recipients of the aid to families with dependent children or temporary assistance for needy families programs or food stamp program, two members who represent labor, and five members who represent the local business community. In addition, one person representing the local community service office of the department of social and health services, one person representing a community action agency or other nonprofit service provider, and one person from a local city or county government shall serve as nonvoting members. [1997 c 59 § 31; 1994 c 299 § 23.]

**74.25A.050 Program participants—Eligibility for assistance programs.** Participants shall be considered recipients of temporary assistance for needy families and remain eligible for medicaid benefits even if the participant does not receive a residual grant. Work supplementation participants shall be eligible for (1) the thirty-dollar plus one-third of earned income exclusion from income, (2) the work related expense disregard, and (3) any applicable child



care expense disregard deemed available to recipient of aid in computing his or her grant under this chapter, unless prohibited by federal law. [1997 c 59 § 32; 1994 c 299 § 24; 1986 c 172 § 6. Formerly RCW 50.63.060.]

### Chapter 74.34

#### ABUSE OF VULNERABLE ADULTS

##### Sections

|           |   |
|-----------|---|
| 74.34.010 | Legislative findings—Intent.  |
| 74.34.020 | Definitions.  |
| 74.34.025 | Limitation on recovery for protective services and benefits.                  |
| 74.34.050 | Immunity from liability. ( <i>Effective January 1, 1998.</i> )                |
| 74.34.055 | Failure to report is gross misdemeanor.                                       |
| 74.34.070 | Response to reports—Information required—Cooperative agreements for services. |
| 74.34.180 | Retaliation against whistleblowers and residents—Remedies—Rules.              |

**74.34.010 Legislative findings—Intent.** The legislature finds that frail elders and vulnerable adults may be subjected to abuse, neglect, exploitation, or abandonment. The legislature finds that there are a number of adults sixty years of age or older who lack the ability to perform or obtain those services necessary to maintain or establish their well-being. The legislature finds that many frail elders and vulnerable adults have health problems that place them in a dependent position. The legislature further finds that a significant number of frail elders and vulnerable adults have mental and verbal limitations that leave them vulnerable and incapable of asking for help and protection.

It is the intent of the legislature to prevent or remedy the abuse, neglect, exploitation, or abandonment of persons sixty years of age or older who have a functional, mental, or physical inability to care for or protect themselves.

It is the intent of the legislature to assist frail elders and vulnerable adults by providing these persons with the protection of the courts and with the least-restrictive services, such as home care, and by preventing or reducing inappropriate institutional care. The legislature finds that it is in the interests of the public health, safety, and welfare of the people of the state to provide a procedure for identifying these vulnerable persons and providing the services and remedies necessary for their well-being.

It is further the intent of the legislature that the cost of protective services rendered to a frail elder or vulnerable adult under this chapter that are paid with state funds only not be subject to recovery from the recipient or the recipient's estate, whether by lien, adjustment, or any other means of recovery, regardless of the income or assets of the recipient of the services. In making this exemption the legislature recognizes that receipt of such services is voluntary and incentives to decline services or delay permission must be kept to a minimum. There may be a need to act or intervene quickly to protect the assets, health, or well-being of a frail elder or vulnerable adult; to prevent or halt the exploitation, neglect, abandonment, or abuse of the person or assets of a frail elder or vulnerable adult; or to prevent or limit inappropriate placement or retention in an institution providing long-term care. The delivery of such services is less likely to be impeded, and consent to such services will be more readily obtained, if the cost of these services is not

subject to recovery. The legislature recognizes that there will be a cost in not seeking financial recovery for such services, but that this cost may be offset by preventing costly and inappropriate institutional placement. [1997 c 392 § 303; 1995 1st sp.s. c 18 § 82; 1984 c 97 § 7.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**74.34.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means a nonaccidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual.

(3) "Consent" means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Exploitation" means the illegal or improper use of a frail elder or vulnerable adult or that person's income or resources, including trust funds, for another person's profit or advantage.

(6) "Neglect" means a pattern of conduct or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that results in the deprivation of care necessary to maintain the vulnerable person's physical or mental health.

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

(8) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" shall include persons found incapacitated under chapter 11.88 RCW, or a person who has a developmental disability under chapter 71A.10 RCW, and persons admitted to any long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, or persons receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW.

(9) No frail elder or vulnerable person who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected. [1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**74.34.025 Limitation on recovery for protective services and benefits.** The cost of benefits and services provided to a frail elder or vulnerable adult under this chapter with state funds only does not constitute an obligation or lien and is not recoverable from the recipient of the services or from the recipient's estate, whether by lien, adjustment, or any other means of recovery. [1997 c 392 § 304.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**74.34.050 Immunity from liability.** (*Effective January 1, 1998.*) (1) A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, or exploitation of a vulnerable adult in a judicial proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in RCW 74.34.030 does not create any duty to report and no civil liability shall attach for any failure to make a permissive report under RCW 74.34.030.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW. [1997 c 386 § 34; 1986 c 187 § 3; 1984 c 97 § 11.]

**Application—Effective date—1997 c 386:** See notes following RCW 74.14D.010.

**74.34.055 Failure to report is gross misdemeanor.** A person who is required to make or cause to be made a report under RCW 74.34.030 or 74.34.040 and who knowingly fails to make the report or fails to cause the report to be made is guilty of a gross misdemeanor. [1997 c 392 § 522.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**74.34.070 Response to reports—Information required—Cooperative agreements for services.** In responding to reports of alleged abuse, exploitation, neglect, or abandonment under this chapter, the department shall provide information to the frail elder or vulnerable adult on protective services available to the person and inform the person of the right to refuse such services. The department shall develop cooperative agreements with community-based agencies servicing the abused elderly and vulnerable adults. The agreements shall cover such subjects as the appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of alleged abuse, the provision of case-management services, standardized data collection procedures, and related coordination activities. [1997 c 386 § 35; 1995 1st sp.s. c 18 § 87; 1984 c 97 § 13.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**74.34.180 Retaliation against whistleblowers and residents—Remedies—Rules.** (1) An employee or contractor who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, exploitation, or abandonment by any person in a boarding home licensed or required to be licensed pursuant to chapter 18.20 RCW or a veterans' home pursuant to chapter 72.36 RCW or care provided in a boarding home or a veterans' home by any person associated with a hospice, home care, or home health agency licensed under chapter 70.127 RCW or other in-home provider may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to expel a resident from a boarding home or veterans' home, or any type of discriminatory treatment of a resident who is a consumer of hospice, home health, home care services, or other in-home services by whom, or upon whose behalf, a complaint substantiated by the department or the department of health has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a functional assessment conducted by the department that shows that the resident or consumer's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or a person with a mandatory duty to report under this chapter, or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, exploitation, or abandonment to the department, or the department of health, or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a nursing home, state hospital, boarding home, or adult family home from: (i) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (ii) for facilities licensed under chapter 70.128 RCW, reducing the hours of employment or terminating employment as a result of the

demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases in which a whistleblower has been terminated or had hours of employment reduced because of the inability of a facility to meet payroll; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a boarding home or veterans' home from exercising its authority to terminate, suspend, or discipline any employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6) No frail elder or vulnerable person who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected, nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person.

(7) The department, and the department of health for facilities, agencies, or individuals it regulates, shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1997 c 392 § 202.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

### Chapter 74.39

#### LONG-TERM CARE SERVICE OPTIONS

##### Sections

74.39.040 Repealed.

**74.39.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 74.39A

#### LONG-TERM CARE SERVICES OPTIONS— EXPANSION

##### Sections

74.39A.008 Repealed.

74.39A.009 Definitions.

74.39A.050 Quality improvement principles.

74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited.

**74.39A.008 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**74.39A.009 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

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

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 and the resident is housed in a private apartment-like unit.

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

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

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

(7) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010.

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

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

(10) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(11) "Nursing home" means a facility licensed under chapter 18.51 RCW.

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

(13) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW. [1997 c 392 § 103.]

**Short title—1997 c 392:** "This act shall be known and may be cited as the Clara act." [1997 c 392 § 101.]

**Findings—1997 c 392:** "The legislature finds and declares that the state's current fragmented categorical system for administering services to persons with disabilities and the elderly is not client and family-centered and has created significant organizational barriers to providing high quality, safe, and effective care and support. The present fragmented system results in uncoordinated enforcement of regulations designed to protect the health and safety of disabled persons, lacks accountability due to the absence of management information systems' client tracking data, and perpetuates difficulty in matching client needs and services to multiple categorical funding sources.

The legislature further finds that Washington's chronically functionally disabled population of all ages is growing at a rapid pace due to a population of the very old and increased incidence of disability due in large measure to technological improvements in acute care causing people to live longer. Further, to meet the significant and growing long-term care needs into the near future, rapid, fundamental changes must take place in the way we finance, organize, and provide long-term care services to the chronically functionally disabled.

The legislature further finds that the public demands that long-term care services be safe, client and family-centered, and designed to encourage individual dignity, autonomy, and development of the fullest human potential at home or in other residential settings, whenever practicable." [1997 c 392 § 102.]

**Construction—Conflict with federal requirements—1997 c 392:** "Any section or provision of this act that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department of health or the department of social and health services. If any section of this act is found to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict. The rules issued under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 392 § 504.]

**Part headings and captions not law—1997 c 392:** "Part headings and captions used in this act are not part of the law." [1997 c 392 § 531.]

**74.39A.050 Quality improvement principles.** The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

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

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, resident managers, and advocates in addition to interviewing providers and staff.

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

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

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

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

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

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

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

(10) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules and accept some or all of the curriculum modules hour for hour towards meeting the requirements for a nursing assistant

certificate as defined in chapter 18.88A RCW. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. [1997 c 392 § 209; 1995 1st sp.s. c 18 § 12.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited.** (1) The aging and adult services administration of the department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the administration licenses or with which it contracts for long-term care services.

(2) All facilities that are licensed by, or that contract with the aging and adult services administration to provide chronic long-term care services shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number and the toll-free number and program description of the long-term care ombudsman as provided by RCW 43.190.050.

(3) The aging and adult services administration shall investigate complaints if the subject of the complaint is within its authority unless the department determines that: (a) The complaint is intended to willfully harass a licensee or employee of the licensee; or (b) there is no reasonable basis for investigation; or (c) corrective action has been taken as determined by the ombudsman or the department.

(4) The aging and adult services administration shall refer complaints to appropriate state agencies, law enforcement agencies, the attorney general, the long-term care ombudsman, or other entities if the department lacks authority to investigate or if its investigation reveals that a follow-up referral to one or more of these entities is appropriate.

(5) The department shall adopt rules that include the following complaint investigation protocols:

(a) Upon receipt of a complaint, the department shall make a preliminary review of the complaint, assess the severity of the complaint, and assign an appropriate response time. Complaints involving imminent danger to the health, safety, or well-being of a resident must be responded to within two days. When appropriate, the department shall make an on-site investigation within a reasonable time after receipt of the complaint or otherwise ensure that complaints are responded to.

(b) The complainant must be: Promptly contacted by the department, unless anonymous or unavailable despite several attempts by the department, and informed of the right to discuss the alleged violations with the inspector and to provide other information the complainant believes will assist the inspector; informed of the department's course of action; and informed of the right to receive a written copy of the investigation report.

(c) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use

its best efforts to interview the resident or residents allegedly harmed by the violations, and, in addition to facility staff, any available independent sources of relevant information, including if appropriate the family members of the resident.

(d) Substantiated complaints involving harm to a resident, if an applicable law or regulation has been violated, shall be subject to one or more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever appropriate, the department shall also give consultation and technical assistance to the provider.

(e) In the best practices of total quality management and continuous quality improvement, after a department finding of a violation that is serious, recurring, or uncorrected following a previous citation, the department shall make an on-site revisit of the facility to ensure correction of the violation, except for license or contract suspensions or revocations.

(f) Substantiated complaints of neglect, abuse, exploitation, or abandonment of residents, or suspected criminal violations, shall also be referred by the department to the appropriate law enforcement agencies, the attorney general, and appropriate professional disciplining authority.

(6) The department may provide the substance of the complaint to the licensee or contractor before the completion of the investigation by the department unless such disclosure would reveal the identity of a complainant, witness, or resident who chooses to remain anonymous. Neither the substance of the complaint provided to the licensee or contractor nor any copy of the complaint or related report published, released, or made otherwise available shall disclose, or reasonably lead to the disclosure of, the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the name of the provider and the name or names of any officer, employee, or agent of the department conducting the investigation shall be disclosed after the investigation has been closed and the complaint has been substantiated. The department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant. Nothing in this subsection shall be construed to interfere with the obligation of the long-term care ombudsman program or department staff to monitor the department's licensing, contract, and complaint investigation files for long-term care facilities.

(7) The resident has the right to be free of interference, coercion, discrimination, and reprisal from a facility in exercising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility that provides long-term care services shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis or for the reason that such resident or any other person made a complaint to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, provided information, or otherwise cooperated with the investigation of such a complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom or upon whose behalf a complaint substantiated by the department has been made to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, within one year of the filing of the complaint, raises a rebuttable presumption that such action was in retaliation for the filing of the

complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance. A facility that provides long-term care services shall not willfully interfere with the performance of official duties by a long-term care ombudsman. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection. [1997 c 392 § 210; 1995 1st sp.s. c 18 § 13.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

## Chapter 74.42

### NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

#### Sections

- 74.42.030 Resident to receive statement of rights, rules, services, and charges.
- 74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation.

**74.42.030 Resident to receive statement of rights, rules, services, and charges.** Each resident or guardian or legal representative, if any, shall be fully informed and receive in writing, in a language the resident or his or her representative understands, the following information:

- (1) The resident's rights and responsibilities in the facility;
- (2) Rules governing resident conduct;
- (3) Services, items, and activities available in the facility; and
- (4) Charges for services, items, and activities, including those not included in the facility's basic daily rate or not paid by medicaid.

The facility shall provide this information before admission, or at the time of admission in case of emergency, and as changes occur during the resident's stay. The resident and his or her representative must be informed in writing in advance of changes in the availability or charges for services, items, or activities, or of changes in the facility's rules. Except in unusual circumstances, thirty days' advance notice must be given prior to the change. The resident or legal guardian or representative shall acknowledge in writing receipt of this information.

The written information provided by the facility pursuant to this section, and the terms of any admission contract executed between the facility and an individual seeking admission to the facility, must be consistent with the requirements of this chapter and chapter 18.51 RCW and, for facilities certified under medicaid or medicare, with the applicable federal requirements. [1997 c 392 § 212; 1979 ex.s. c 211 § 3.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation.** (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.

(4) If a resident chooses to remain in the nursing facility, the department shall respect that choice, provided that if the resident is a medicaid recipient, the resident continues to require a nursing facility level of care.

(5) If the department determines that a resident no longer requires a nursing facility level of care, the resident shall not be discharged from the nursing facility until at least thirty days after written notice is given to the resident, the resident's surrogate decision maker and, if appropriate, a family member or the resident's representative. A form for requesting a hearing to appeal the discharge decision shall be attached to the written notice. The written notice shall include at least the following:

- (a) The reason for the discharge;
- (b) A statement that the resident has the right to appeal the discharge; and
- (c) The name, address, and telephone number of the state long-term care ombudsman.

(6) If the resident appeals a department discharge decision, the resident shall not be discharged without the resident's consent until at least thirty days after a final order is entered upholding the decision to discharge the resident.

(7) Before the facility transfers or discharges a resident, the facility must first attempt through reasonable accommodations to avoid the transfer or discharge unless the transfer or discharge is agreed to by the resident. The facility shall admit or retain only individuals whose needs it can safely and appropriately serve in the facility with available staff or through the provision of reasonable accommodations required by state or federal law. "Reasonable accommodations" has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec.

12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [1997 c 392 § 216; 1995 1st sp.s. c 18 § 64; 1979 ex.s. c 211 § 45.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

## Chapter 74.46

### NURSING HOME AUDITING AND COST REIMBURSEMENT ACT OF 1980

#### Sections

|           |   |
|-----------|---|
| 74.46.360 | Cost basis of land and depreciation base of depreciable assets.   |
| 74.46.370 | Lives of assets.  |
| 74.46.430 | Prospective payment rates—Minimum hourly wages. ( <i>Effective until June 30, 1998.</i> )                                     |
| 74.46.465 | Rate adjustment for physical plant capital improvements and property tax increases. ( <i>Effective until June 30, 1998.</i> ) |
| 74.46.510 | Property cost center. ( <i>Effective until June 30, 1998.</i> )   |
| 74.46.530 | Return on investment rate—Review. ( <i>Effective until June 30, 1998.</i> )   |

**74.46.360 Cost basis of land and depreciation base of depreciable assets.** (1) For all partial or whole rate periods after December 31, 1984, the cost basis of land and depreciation base of depreciable assets shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation, if applicable, which has been incurred during periods that the assets have been used in or as a facility by any contractor, such accumulated depreciation to be measured in accordance with subsections (4), (5), and (6) of this section and RCW 74.46.350 and 74.46.370. If the department challenges the historical cost of an asset, or if the contractor cannot or will not provide the historical costs, the department will have the department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of purchase. The cost basis of land and depreciation base of depreciable assets will not exceed such fair market value.

(2) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs of the additional land acquired for the replacement construction or building additions to be the lesser of:

(a) The contractor's or lessor's actual cost per square foot; or

(b) The square foot land value as established by an appraisal that meets the latest publication of the Uniform Standards of Professional Appraisal Practice (USPAP) and the financial institutions reform, recovery, and enhancement act (FIRREA).

(3) Subject to the provisions of subsection (2) of this section, if, in the course of financing a project, an arm's-length lender has ordered a Uniform Standards of Professional Appraisal Practice appraisal on the land that meets financial institutions reform, recovery, and enhancement act standards and the arm's-length lender has accepted the

ordered appraisal, the department shall accept the appraisal value as allowable land costs for calculation of payment.

If the contractor or lessor is unable or unwilling to provide or cause to be provided to the department, or the department is unable to obtain from the arm's-length lender, a lender-approved appraisal that meets the standards of the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act, the department shall order such an appraisal and accept the appraisal as the allowable land costs. If the department orders the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act appraisal, the contractor shall immediately reimburse the department for the costs incurred.

(4) The historical cost of depreciable and nondepreciable donated assets, or of depreciable and nondepreciable assets received through testate or intestate distribution, shall be the lesser of:

(a) Fair market value at the date of donation or death; or

(b) The historical cost base of the owner last contracting with the department, if any.

(5) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(6)(a) For facilities, other than those described under subsection (2) of this section, operating prior to July 1, 1997, where land or depreciable assets are acquired that were used in the medical care program subsequent to January 1, 1980, the cost basis or depreciation base of the assets will not exceed the net book value which did exist or would have existed had the assets continued in use under the previous contract with the department; except that depreciation shall not be assumed to accumulate during periods when the assets were not in use in or as a facility.

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new cost basis or depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious. For all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, depreciable or nondepreciable, occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers: **PROVIDED, HOWEVER,** That this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease: **PROVIDED FURTHER,** That for any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to July 18, 1984, and submitted to the department prior to



January 1, 1988, the cost basis of allowable land and the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure. For medicaid cost reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

(c) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option:

(i) To have the provisions of subsection (b) of this section apply to the purchase; or

(ii) To have the reimbursement for property and return on investment continue to be calculated pursuant to the provisions contained in \*RCW 74.46.530(1) (e) and (f) based upon the provisions of the lease in existence on the date of the purchase, but only if the purchase date meets one of the following criteria:

(A) The purchase date is after the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(B) The purchase date is within one year of the lease expiration or renewal date contained in the lease;

(C) The purchase date is after a rate setting for the facility in which the reimbursement rate set pursuant to this chapter no longer is equal to or greater than the actual cost of the lease; or

(D) The purchase date is within one year of any purchase option in existence on January 1, 1988.

(d) For all rate periods past or future where land or depreciable assets are acquired from a related organization, the contractor's cost basis and depreciation base shall not exceed the base the related organization had or would have had under a contract with the department.

(e) Where the land or depreciable asset is a donation or distribution between related organizations, the cost basis or depreciation base shall be the lesser of (i) fair market value, less salvage value, or (ii) the cost basis or depreciation base the related organization had or would have had for the asset under a contract with the department. [1997 c 277 § 1; 1991 sp.s. c 8 § 18; 1989 c 372 § 14. Prior: 1988 c 221 § 1; 1988 c 208 § 1; 1986 c 175 § 1; 1980 c 177 § 36.]

\*Reviser's note: RCW 74.46.530 was repealed by 1995 1st sp.s. c 18 § 98, effective June 30, 1998.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1980 c 177: See RCW 74.46.901.

**74.46.370 Lives of assets.** (1) Except for new buildings, major remodels, and major repair projects, as defined in subsection (2) of this section, the contractor shall use lives which reflect the estimated actual useful life of the asset and which shall be no shorter than guideline lives as established by the department. Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arm's-length acquisition of the asset, whichever is more recent. In

cases where RCW 74.46.360(6)(a) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) Effective July 1, 1997, for asset acquisitions and new facilities, major remodels, and major repair projects that begin operations on or after July 1, 1997, the department shall use the most current edition of Estimated Useful Lives of Depreciable Hospital Assets, or as it may be renamed, published by the American Hospital Publishing, Inc., an American hospital association company, for determining the useful life of new buildings, major remodels, and major repair projects, however, the shortest life that may be used for new buildings is thirty years. New buildings, major remodels, and major repair projects include those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(3) Building improvements, other than major remodels and major repairs, shall be depreciated over the remaining useful life of the building, as modified by the improvement.

(4) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement.

(5) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation. [1997 c 277 § 2; 1980 c 177 § 37.]

**74.46.430 Prospective payment rates—Minimum hourly wages.** (Effective until June 30, 1998.) (1) The department, as provided by this chapter, will determine prospective payment rates for services provided to medical care recipients. Each rate so determined shall represent the contractor's maximum compensation within each cost center and for return on investment for each resident day for such medical care recipient.

(2) The department may modify such maximum per resident day rates, consistent with this chapter, pursuant to the administrative appeals or exception procedure authorized by RCW 74.46.780.

(3) For July 1, 1995, and all following rates, the maximum prospective component payment rates for the nursing services, food, administrative, operational, and property cost centers, and the return on investment (ROI) component rate for each nursing facility shall be established based upon a minimum licensed bed facility occupancy level of ninety percent, except for rate adjustments as provided for in \*RCW 74.46.460(6), and except for entirely new facilities that commenced operation between January 1, 1994, and June 30, 1994, and were impacted by the ninety percent minimum occupancy factor, shall have their nursing services, food, administrative, and operational component rates revised based upon a minimum licensed bed facility occupancy level of eighty-five percent, effective May 1, 1997.

(4) The minimum ninety percent facility occupancy shall be used to calculate individual rates, to calculate the median cost limits (MCLs) for the metropolitan statistical area (MSA) and nonmetropolitan statistical area (non-MSA) peer groups, and to array facilities by costs in calculating the variable return portion of the return on investment rate component (ROI).

(5) All contractors shall be required to adjust and maintain wages for all employees to a minimum hourly wage of four dollars and seventy-six cents per hour beginning January 1, 1988, and five dollars and fifteen cents per hour beginning January 1, 1989. [1997 c 277 § 3; 1995 1st sp.s. c 18 § 100; 1993 sp.s. c 13 § 8; 1987 2nd ex.s. c 1 § 2; 1987 c 476 § 2; 1983 1st ex.s. c 67 § 19; 1980 c 177 § 43.]

\*Reviser's note: RCW 74.46.460 was repealed by RCW 74.46.595, effective June 30, 1998.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**Effective date—1993 sp.s. c 13:** See note following RCW 74.46.020.

**74.46.465 Rate adjustment for physical plant capital improvements and property tax increases.** (*Effective until June 30, 1998.*) (1) The department, in consultation with interested parties, shall adopt rules to establish criteria the department will use in reviewing any request by a contractor for a prospective rate adjustment for a physical plant capital improvement. The rules shall also specify the time periods for submission and review of proposed physical plant capital improvements. In establishing the criteria, the department may consider, but is not limited to, the following:

(a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;

(b) The amount and scope of renovation or remodel to the facility and whether the facility will be able to serve better the needs of its residents;

(c) Whether the proposed improvement improves the quality of the living conditions of the residents;

(d) Whether the proposed improvement might eliminate life safety, building code, or construction standard waivers;

(e) The percentage of public-pay residents in the facility.

(2) If a contractor experiences an increase in property taxes relating to construction qualifying under RCW 74.46.360(2), the department shall adjust rates to cover state and county increases in real estate taxes, effective the first day on which the increased tax payment is due, related to construction qualifying for reimbursement under RCW 74.46.360(2).

(3) Rate adjustments under this section may be provided only if funds are appropriated for this purpose. [1997 c 277 § 4; 1987 c 476 § 8.]

**74.46.510 Property cost center.** (*Effective until June 30, 1998.*) (1) The property cost center rate for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, as provided in RCW 74.46.180, by the greater of a facility's total resident days for the facility in the prior period or resident days as calculated on ninety or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property cost center rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property rate shall be rebased annually, effective July 1, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

(4) For the purpose of calculating a nursing facility's property component rate, if a contractor elects to bank licensed beds or to convert banked beds to active service, pursuant to chapter 70.38 RCW, the department shall use the facility's anticipated resident occupancy level subsequent to the decrease or increase in licensed bed capacity; however, in no case shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after banking or conversion. [1997 c 277 § 5; 1995 1st sp.s. c 18 § 108; 1993 sp.s. c 13 § 16; 1980 c 177 § 51.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**Effective date—1993 sp.s. c 13:** See note following RCW 74.46.020.

**Effective dates—1980 c 177:** See RCW 74.46.901.

**74.46.530 Return on investment rate—Review.** (*Effective until June 30, 1998.*) (1) The department shall establish for each medicaid nursing facility a return on investment (ROI) rate composed of two parts: A financing allowance and a variable return allowance. The financing allowance part of a facility's return on investment component rate shall be rebased annually, effective July 1, in accordance with the provisions of this section and this chapter.

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the greater of a nursing facility's total resident days from the most recent cost report period or resident days calculated on ninety percent or eighty-five percent facility occupancy as applicable. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the financing and variable return allowances shall be adjusted to the anticipated resident day level.

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, 74.46.370, 74.46.380, and \*section 8 of this act, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower, except that \*section 8 of this act shall be applied if the nursing facility meets all of the criteria specified therein. In

the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(c) In determining the variable return allowance:

(i) For July 1, 1995, rate setting only, the department, without utilizing peer groups, shall first rank all facilities in numerical order from highest to lowest according to their per resident day adjusted or audited, or both, allowable costs for nursing services, food, administrative, and operational costs combined for the 1994 calendar year cost report period.

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the sum of the facility's nursing services, food, administrative, and operational rate components. The percentage amounts will be based on groupings of facilities according to the rankings prescribed in (i) of this subsection (1)(c). The percentages calculated and assigned will remain the same for the variable return allowance paid in all July 1, 1996, and July 1, 1997, rates as well. Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

(d) The sum of the financing allowance and the variable return allowance shall be the return on investment rate for each facility, and shall be added to the prospective rates of each contractor as determined in \*\*RCW 74.46.450 through 74.46.510.

(e) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement, and for which the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property cost center determined according to \*\*RCW 74.46.510, is more than the return on investment rate determined according to subsection (1)(d) of this section, the following shall apply:

(i) The financing allowance shall be recomputed substituting the fair market value of the assets as of January 1, 1982, as determined by the department of general administration through an appraisal procedure, less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious.

(ii) The sum of the financing allowance computed under subsection (1)(e)(i) of this section and the variable allowance shall be compared to the annualized lease payment, plus any interest and depreciation associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property cost center rate determined according to \*\*RCW 74.46.510. The lesser of the two amounts shall be called the alternate return on investment rate.

(iii) The return on investment rate determined according to subsection (1)(d) of this section or the alternate return on investment rate, whichever is greater, shall be the return on investment rate for the facility and shall be added to the prospective rates of the contractor as determined in \*\*RCW 74.46.450 through 74.46.510.

(f) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease, the treatment provided in subsection (1)(e) of this section shall be applied except that in the case of renewals or extensions made subsequent to April 1, 1985, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(2) For the purpose of calculating a nursing facility's return on investment component rate, if a contractor elects to bank beds or to convert banked beds to active service, pursuant to chapter 70.38 RCW, the department shall use the facility's anticipated resident occupancy level subsequent to the decrease or increase in licensed bed capacity; however, in no case shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after banking or conversion.

(3) Each biennium, beginning in 1985, the secretary shall review the adequacy of return on investment rates in relation to anticipated requirements for maintaining, reducing, or expanding nursing care capacity. The secretary shall report the results of such review to the legislature and make recommendations for adjustments in the return on investment rates utilized in this section, if appropriate. [1997 c 277 § 6; 1995 1st sp.s. c 18 § 109; 1993 sp.s. c 13 § 17; 1991 sp.s. c 8 § 17; 1985 c 361 § 17; 1983 1st ex.s. c 67 § 28; 1981 1st ex.s. c 2 § 7; 1980 c 177 § 53.]

**Reviser's note:** \*(1) Section 8 of this act was vetoed by the governor.

\*\* (2) RCW 74.46.420 through 74.46.590 were repealed by RCW 74.46.595, effective June 30, 1998.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.008.

**Effective date—1993 sp.s. c 13:** See note following RCW 74.46.020.

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**Savings—1985 c 361:** See note following RCW 74.46.020.

**Effective dates—1983 1st ex.s. c 67; 1980 c 177:** See RCW 74.46.901.

**Severability—Effective dates—1981 1st ex.s. c 2:** See notes following RCW 18.51.010.

## Title 75

### FOOD FISH AND SHELLFISH

#### Chapters

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| <b>75.08</b> | <b>Administration.</b>                        |
| <b>75.20</b> | <b>Construction projects in state waters.</b> |
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| <b>75.50</b> | <b>Salmon enhancement program.</b>            |

**75.54 Recreational salmon and marine fish enhancement program.**

**Chapter 75.08  
ADMINISTRATION**

Sections

75.08.530 Annual report—Salmon and steelhead harvest.

**75.08.530 Annual report—Salmon and steelhead harvest.** Beginning September 1, 1998, and each September 1st thereafter, the department shall submit a report to the appropriate standing committees of the legislature identifying the total salmon and steelhead harvest of the preceding season. This report shall include the final commercial harvests and recreational harvests. At a minimum, the report shall clearly identify:

(1) The total treaty tribal and nontribal harvests by species and by management unit;

(2) Where and why the nontribal harvest does not meet the full allocation allowed under *United States v. Washington*, 384 F. Supp. 312 (1974) (Boldt I) including a summary of the key policies within the management plan that result in a less than full nontribal allocation; and

(3) The location and quantity of salmon and steelhead harvested under the wastage provisions of *United States v. Washington*, 384 F. Supp. 312 (1974). [1997 c 414 § 1.]

**Chapter 75.20**

**CONSTRUCTION PROJECTS IN STATE WATERS**

Sections

75.20.015 Environmental excellence program agreements—Effect on chapter.

75.20.098 Mitigation plan review.

75.20.100 Hydraulic projects or other work—Plans and specifications—Permits—Approval—Criminal penalty—Emergencies.

75.20.325 Sediment dredging or capping actions—Dredging of existing channels and berthing areas—Mitigation not required.

75.20.330 Small scale prospecting and mining—Rules.

75.20.340 Hydraulic project approval—Habitat incentives agreement.

**75.20.015 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 25.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**75.20.098 Mitigation plan review.** When reviewing a mitigation plan under RCW 75.20.100 or 75.20.103, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030. [1997 c 424 § 6.]

**75.20.100 Hydraulic projects or other work—Plans and specifications—Permits—Approval—Criminal penalty—Emergencies.** (1) In the event that any person or

government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the approval of the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld.

(2)(a) Except as provided in RCW 75.20.1001, the department shall grant or deny approval of a standard permit within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section.

(b) The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life.

(c) The forty-five day requirement shall be suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection; or

(iii) The applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(d) For purposes of this section, "standard permit" means a written permit issued by the department when the conditions under subsections (3) and (6)(b) of this section are not met.

(3)(a) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish resources. Expedited permit requests require a complete written application as provided in subsection (2)(b) of this section and shall be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance.

(b) For the purposes of this subsection, "imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(d) The department or the county legislative authority may determine if an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists.

(4) Approval of a standard permit is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent.

(5) If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained approval of the department as to the adequacy of the means proposed 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, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is 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.

(6)(a) In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately, upon request, oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval to protect fish life shall be established by the department and reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately, upon request, for a stream crossing during an emergency situation.

(b) For purposes of this section and RCW 75.20.103, "emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(c) The department or the county legislative authority may declare and continue an emergency when one or more of the criteria under (b) of this subsection are met. The county legislative authority shall immediately notify the department if it declares an emergency under this subsection.

(7) The department shall, at the request of a county, develop five-year maintenance approval agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sand bars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects.

(8) This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes

authorized under or recognized as being valid by the state's water codes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 75.20.103.

A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2), shall serve as a hydraulic project approval for the life of the plan if fish are selected as one of the public resources for coverage under such a plan.

(9) For the purposes of this section and RCW 75.20.103, "bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(10) The phrase "to construct any form of hydraulic project or perform other work" does not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval. [1997 c 385 § 1; 1997 c 290 § 4; 1993 sp.s. c 2 § 30; 1991 c 322 § 30; 1988 c 272 § 1; 1988 c 36 § 33; 1986 c 173 § 1; 1983 1st ex.s. c 46 § 75; 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.]

**Reviser's note:** This section was amended by 1997 c 290 § 4 and by 1997 c 385 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**Severability—1988 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." [1988 c 272 § 6.]

**75.20.325 Sediment dredging or capping actions—Dredging of existing channels and berthing areas—Mitigation not required.** The department shall not require mitigation for sediment dredging or capping actions that result in a cleaner aquatic environment and equal or better habitat functions and values, if the actions are taken under a state or federal cleanup action.

This chapter shall not be construed to require habitat mitigation for navigation and maintenance dredging of existing channels and berthing areas. [1997 c 424 § 5.]

**75.20.330 Small scale prospecting and mining—Rules.** (1) Small scale prospecting and mining shall not require written approval under this chapter if the prospecting is conducted in accordance with provisions established by the department.

(2) By December 31, 1998, the department shall adopt rules applicable to small scale prospecting and mining activities subject to this section. The department shall

develop the rules in cooperation with the recreational mining community and other interested parties.

(3) Within two months of adoption of the rules, the department shall distribute an updated gold and fish pamphlet that describes methods of mineral prospecting that are consistent with the department's rule. The pamphlet shall be written to clearly indicate the prospecting methods that require written approval under this chapter and the prospecting methods that require compliance with the pamphlet. To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written approval issued under this chapter.

(4) For the purposes of this chapter, "small scale prospecting and mining" means only the use of the following methods: Pans, nonmotorized sluice boxes, concentrators, and minirocker boxes for the discovery and recovery of minerals. [1997 c 415 § 2.]

**Findings—1997 c 415:** "The legislature finds that small scale prospecting and mining: (1) Is an important part of the heritage of the state; (2) provides economic benefits to the state; and (3) can be conducted in a manner that is beneficial to fish habitat and fish propagation. Now, therefore, the legislature declares that small scale prospecting and mining shall be regulated in the least burdensome manner that is consistent with the state's fish management objectives and the federal endangered species act." [1997 c 415 § 1.]

**75.20.340 Hydraulic project approval—Habitat incentives agreement.** When a private landowner is applying for hydraulic project approval under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of natural resources as provided in RCW 77.12.830, the department shall comply with the terms of that agreement when evaluating the request for hydraulic project approval. [1997 c 425 § 4.]

**Finding—Intent—1997 c 425:** See note following RCW 77.12.830.

## Chapter 75.25

### RECREATIONAL LICENSES

#### Sections

75.25.012 License suspension—Noncompliance with support order—Reissuance.

**75.25.012 License suspension—Noncompliance with support order—Reissuance.** (1) Licenses issued pursuant to this chapter shall be invalid for any period in which a person is certified by the department of social and health services or a court of competent jurisdiction as a person in noncompliance with a support order or \*residential or visitation order. Fisheries patrol officers, ex officio fisheries patrol officers, and authorized fisheries employees shall enforce this section through checks of the department of licensing's computer data base. A listing on the department of licensing's data base that an individual's license is currently suspended pursuant to RCW 46.20.291(7) shall be prima facie evidence that the individual is in noncompliance with a support order or \*residential or visitation order. Presentation of a written release issued by the department of social and health services or a court stating that the person is in compliance with an order shall serve as prima facie

proof of compliance with a support order, \*residential order, or visitation order.

(2) It is unlawful to purchase, obtain, or possess a license required by this chapter during any period in which a license is suspended. [1997 c 58 § 880.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

## Chapter 75.28

### COMMERCIAL LICENSES

#### Sections

75.28.010 Commercial licenses and permits required—Exemption.  
 75.28.011 Transfer of licenses—Restrictions—Fees—Inheritability.  
 75.28.042 License suspension—Noncompliance with support order—Reissuance.  
 75.28.048 Vessel operation—License designation—Alternate operator license required.  
 75.28.055 Alternate operators—Increase for certain licenses.  
 75.28.095 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats—License renewal.  
 75.28.110 Commercial salmon fishery licenses—Gear and geographic designations—Fees.  
 75.28.133 Surcharge on Dungeness crab—coastal fishery license and Dungeness crab—coastal class B fishery license—Coastal crab account.

**75.28.010 Commercial licenses and permits required—Exemption.** (1) Except as otherwise provided by this title, it is unlawful to engage in any of the following activities without a license or permit issued by the director:

(a) Commercially fish for or take food fish or shellfish;  
 (b) Deliver food fish or shellfish taken in offshore waters;

(c) Operate a charter boat or commercial fishing vessel engaged in a fishery;

(d) Engage in processing or wholesaling food fish or shellfish; or

(e) Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or

wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [1997 c 58 § 883; 1993 c 340 § 2; 1991 c 362 § 1; 1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780-511.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Finding—Intent—1993 c 340:** "The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legislature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993, as adjusted under section 19, chapter 316, Laws of 1989." [1993 c 340 § 1.]

**Captions not law—1993 c 340:** "Section headings as used in this act do not constitute any part of the law." [1993 c 340 § 57.]

**Effective date—1993 c 340:** "This act shall take effect January 1, 1994." [1993 c 340 § 58.]

**Severability—1993 c 340:** "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." [1993 c 340 § 59.]

**75.28.011 Transfer of licenses—Restrictions—Fees—Inheritability.** (1) Unless otherwise provided in this title, a license issued under this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is:

(i) The same as the resident license renewal fee if the license is not limited under chapter 75.30 RCW;

(ii) Three and one-half times the resident renewal fee if the license is not a commercial salmon license and the license is limited under chapter 75.30 RCW;

(iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 75.30 RCW;

(iv) Five hundred dollars if the license is a Dungeness crab—coastal fishery license; or

(v) If a license is transferred from a resident to a nonresident, an additional fee is assessed that is equal to the difference between the resident and nonresident license fees at the time of transfer, to be paid by the transferee.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate. [1997 c 418 § 1; 1995 c 228 § 1; 1993 sp.s. c 17 § 34.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** "Sections 34 through 47 of this act shall take effect only if Senate Bill No. 5124 becomes law by August 1, 1993." [1993 sp.s. c 17 § 48.] Senate Bill No. 5124 [1993 c 340] did become law. Sections 34 through 47 of 1993 sp.s. c 17 did become law.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 75.25.091.

**75.28.042 License suspension—Noncompliance with support order—Reissuance.** (1) The department shall immediately suspend the license of a person who has been certified pursuant to \*RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*\*residential or visitation order.

(2) A listing on the department of licensing's data base that an individual's license is currently suspended pursuant to RCW 46.20.291(7) shall be prima facie evidence that the individual is in noncompliance with a support order or \*\*residential or visitation order. Presentation of a written release issued by the department of social and health services or a court stating that the person is in compliance with an order shall serve as proof of compliance. [1997 c 58 § 882.]

**Reviser's note:** \*(1) The reference to section 402 of this act is erroneous. Section 802 of the act, codified as RCW 74.20A.320, was apparently intended.

\*\* (2) 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was voted. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**75.28.048 Vessel operation—License designation—Alternate operator license required.** (1) A person who holds a commercial fishery license, delivery license, or charter license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license, delivery license, or charter license under RCW 75.28.046.



(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses, delivery licenses, and charter licenses under RCW 75.28.046.

(4) An individual who holds two dungeness crab—Puget Sound fishery licenses may operate the licenses on one vessel if the vessel owner or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel, to operate a vessel as a charter boat, or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state. [1997 c 233 § 2; 1993 c 340 § 25.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 75.28.010.

**75.28.055 Alternate operators—Increase for certain licenses.** The fish and wildlife commission may, by rule, increase the number of alternate operators beyond the level authorized by RCW 75.28.030 and 75.28.046 for a commercial fishery license, delivery license, or charter license. [1997 c 421 § 1.]

**75.28.095 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats—License renewal.** (1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual fees and surcharges are:

| License or Permit     | Annual Fee<br>(RCW 75.50.100 Surcharge) |                       | Governing<br>Section |
|-----------------------|---|-----------------------|----------------------|
|                       | Resident                                | Nonresident           |                      |
| (a) Nonsalmon charter | \$225                                   | \$375                 |                      |
| (b) Salmon charter    | \$380<br>(plus \$100)                   | \$685<br>(plus \$100) | RCW 75.30.065        |
| (c) Salmon angler     | \$ 0                                    | \$ 0                  | RCW 75.30.070        |
| (d) Salmon roe        | \$ 95                                   | \$ 95                 | RCW 75.28.690        |

(2) Except as provided in subsection (5) of this section, it is unlawful to operate a vessel as a charter boat from which salmon or salmon and other food fish or shellfish are taken without a salmon charter license designating the vessel. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 75.30.065.

(3) Except as provided in subsections (2) and (5) of this section, it is unlawful to operate a vessel as a charter boat from which food fish or shellfish are taken without a nonsalmon charter license. As used in this subsection, "food fish" does not include salmon.

(4) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use, and that brings food fish or shellfish into state ports or brings food fish or shellfish taken from state waters into United States ports. The director may specify by rule when a vessel is a "charter boat" within this definition. "Charter boat" does not mean a vessel used by a guide for clients fishing for food fish 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.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year. [1997 c 76 § 2; 1995 c 104 § 1; 1993 sp.s. c 17 § 41. Prior: (1993 c 340 § 21 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1.]

**Effective date—1997 c 76:** See note following RCW 75.28.110.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 75.28.011.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 75.25.091.

**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.]

**Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327:** "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 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

**Declaration of state policy—1977 ex.s. c 327:** "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. Formerly RCW 75.28.600.]

**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.]

**Effective dates—1971 ex.s. c 283:** See note following RCW 75.28.113.

*Limitation on issuance of salmon charter boat licenses:* RCW 75.30.065.  
*Salmon charter boats—Angler permit, when required:* RCW 75.30.070.

**75.28.110 Commercial salmon fishery licenses—Gear and geographic designations—Fees.** (1) The following commercial salmon fishery licenses are required for the license holder to use the specified gear to fish for salmon in state waters. Only a person who meets the qualifications of RCW 75.30.120 may hold a license listed in this subsection. The licenses and their annual fees and surcharges under RCW 75.50.100 are:

| Fishery License                                 | Resident Fee | Nonresident Fee | Surcharge  |
|---|--------------|-----------------|------------|
| (a) Salmon Gill Net—Grays Harbor-Columbia river | \$380        | \$685           | plus \$100 |
| (b) Salmon Gill Net—Puget Sound                 | \$380        | \$685           | plus \$100 |
| (c) Salmon Gill Net—Willapa Bay-Columbia river  | \$380        | \$685           | plus \$100 |
| (d) Salmon purse seine                          | \$530        | \$985           | plus \$100 |
| (e) Salmon reef net                             | \$380        | \$685           | plus \$100 |
| (f) Salmon troll                                | \$380        | \$685           | plus \$100 |

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated under RCW 75.28.045.

(3) Holders of commercial salmon fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the department.

(4) A salmon troll license includes a salmon delivery license.

(5) A salmon gill net license authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

(a) "Puget Sound" includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds, and estuaries lying 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 the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(b) "Grays Harbor-Columbia river" includes waters of Grays Harbor and tributary estuaries lying 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 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.

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection.

(6) A commercial salmon troll fishery license may be renewed under this section if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. A commercial salmon gill net, reef net, or seine fishery license may be renewed under this section if the license holder

notifies the department by August 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year. [1997 c 76 § 1; 1996 c 267 § 28; 1993 sp.s. c 17 § 35; (1993 c 340 § 12 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 3; 1985 c 107 § 1; 1983 1st ex.s. c 46 § 113; 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).]

**Effective date—1997 c 76:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 76 § 3.]

**Intent—Effective date—1996 c 267:** See notes following RCW 75.08.011.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 75.28.011

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 75.25.091.

*Limitations on issuance of commercial salmon fishing licenses:* RCW 75.30.120.

**75.28.133 Surcharge on Dungeness crab—coastal fishery license and Dungeness crab—coastal class B fishery license—Coastal crab account.** A surcharge of one hundred twenty dollars shall be collected with each Dungeness crab—coastal fishery license and with each Dungeness crab—coastal class B fishery license issued under RCW 75.28.130. Moneys collected under this section shall be placed in the coastal crab account created under RCW 75.30.390. [1997 c 418 § 5.]

## Chapter 75.30

### LICENSE LIMITATION PROGRAMS

#### Sections

|           |  |
|-----------|--|
| 75.30.015 | License renewed subject to RCW 75.28.042   |
| 75.30.130 | Dungeness crab—Puget Sound fishery license—<br>Limitations—Qualifications ( <i>as amended by 1997 c 115</i> ). |
| 75.30.130 | Dungeness crab—Puget Sound fishery license—<br>Limitations—Qualifications ( <i>as amended by 1997 c 233</i> ). |
| 75.30.360 | Crab taken in offshore waters—Criteria for landing in Washington state—Limitations.                            |
| 75.30.380 | Transfer of Dungeness crab—coastal fishery licenses—Fee.   |
| 75.30.390 | Coastal crab account—Created—Revenues—Expenditures.  |
| 75.30.400 | Decodified.  |

**75.30.015 License renewed subject to RCW 75.28.042.** (1) A license renewed under the provisions of this chapter that has been suspended under RCW 75.28.042 shall be subject to the following provisions:

(a) A license renewal fee shall be paid as a condition of maintaining a current license; and

(b) The department shall waive any other license requirements, unless the department determines that the license holder has had sufficient opportunity to meet these requirements.

(2) The provisions of subsection (1) of this section shall apply only to a license that has been suspended under RCW

75.28.042 for a period of twelve months or less. A license holder shall forfeit a license subject to this chapter and may not recover any license renewal fees previously paid if the license holder does not meet the requirements of RCW 74.20A.320(9) within twelve months of license suspension. [1997 c 58 § 884.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**75.30.130 Dungeness crab—Puget Sound fishery license—Limitations—Qualifications (as amended by 1997 c 115).** (1) It is unlawful to take dungeness crab (*Cancer magister*) in Puget Sound without first obtaining a dungeness crab—Puget Sound fishery license. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a). A dungeness crab—Puget Sound fishery license is not required to take other species of crab, including red rock crab (*Cancer productus*).

(2) Except as provided in subsections (3) and (7) of this section, after January 1, 1982, the director shall issue no new dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualifications may renew an existing license:

(a) The person shall have held the dungeness crab—Puget Sound fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person; and

(b) The person shall document, by valid shellfish receiving tickets issued by the department, that one thousand pounds of dungeness crab were caught and sold during the previous two-year period ending on December 31st of an odd-numbered year:

(i) Under the license sought to be renewed; or

(ii) Under any combination of the following commercial fishery licenses that the person held when the crab were caught and sold: Crab pot—Non-Puget Sound, crab ring net—Non-Puget Sound, dungeness crab—Puget Sound. Sales under a license other than the one sought to be renewed may be used for the renewal of no more than one dungeness crab—Puget Sound fishery license.

(3) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(4) The director may reduce or waive the poundage requirement established under subsection (2)(b) of this section upon the recommendation of a review board established under RCW 75.30.050. The review board may recommend a reduction or waiver of the poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the poundage requirement. The director shall adopt rules governing the operation of the review boards and defining "extenuating circumstances."

(5) This section does not restrict the issuance of commercial crab licenses for areas other than Puget Sound or for species other than dungeness crab.

(6) ~~((Subject to the restrictions in section 11 of this act, dungeness crab—))~~ Puget Sound fishery licenses are transferable from one license holder to another.

(7) If fewer than ~~((two hundred))~~ one hundred twenty-five persons are eligible for dungeness crab—Puget Sound fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain ~~((two hundred))~~ one hundred twenty-five licenses in the Puget Sound dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new dungeness crab—Puget Sound fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050. [1997 c 115 § 1; 1993 c 340 § 34; 1983 1st ex.s. c 46 § 147; 1982 c 157 § 1; 1980 c 133 § 4. Formerly RCW 75.28.275.]

**75.30.130 Dungeness crab—Puget Sound fishery license—Limitations—Qualifications (as amended by 1997 c 233).** (1) It is

unlawful to take dungeness crab (*Cancer magister*) in Puget Sound without first obtaining a dungeness crab—Puget Sound fishery license. As used in this section, "Puget Sound" has the meaning given in RCW 75.28.110(5)(a). A dungeness crab—Puget Sound fishery license is not required to take other species of crab, including red rock crab (*Cancer productus*).

(2) Except as provided in subsections (3) and ~~((7))~~ (6) of this section, after January 1, 1982, the director shall issue no new dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualification~~((s))~~ may renew an existing license: ~~((a))~~ The person shall have held the dungeness crab—Puget Sound fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person~~((; and~~

~~((b) The person shall document, by valid shellfish receiving tickets issued by the department, that one thousand pounds of dungeness crab were caught and sold during the previous two-year period ending on December 31st of an odd-numbered year:~~

~~((i) Under the license sought to be renewed; or~~

~~((ii) Under any combination of the following commercial fishery licenses that the person held when the crab were caught and sold: Crab pot—Non-Puget Sound, crab ring net—Non-Puget Sound, dungeness crab—Puget Sound. Sales under a license other than the one sought to be renewed may be used for the renewal of no more than one dungeness crab—Puget Sound fishery license)).~~

(3) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(4) ~~((The director may reduce or waive the poundage requirement established under subsection (2)(b) of this section upon the recommendation of a review board established under RCW 75.30.050. The review board may recommend a reduction or waiver of the poundage requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the poundage requirement. The director shall adopt rules governing the operation of the review boards and defining "extenuating circumstances."))~~

~~((5))~~ This section does not restrict the issuance of commercial crab licenses for areas other than Puget Sound or for species other than dungeness crab.

~~((6) Subject to the restrictions in section 11 of this act,))~~ (5) Dungeness crab—Puget Sound fishery licenses are transferable from one license holder to another.

~~((7))~~ (6) If fewer than two hundred persons are eligible for dungeness crab—Puget Sound fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain two hundred licenses in the Puget Sound dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new dungeness crab—Puget Sound fishery licenses, based upon recommendations of a board of review established under RCW 75.30.050. [1997 c 233 § 1; 1993 c 340 § 34; 1983 1st ex.s. c 46 § 147; 1982 c 157 § 1; 1980 c 133 § 4. Formerly RCW 75.28.275.]

**Reviser's note:** RCW 75.30.130 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 75.28.010.

**Severability—1980 c 133:** "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." [1980 c 133 § 8.]

**Legislative findings—1980 c 133:** "The legislature finds that a significant commercial crab fishery is developing within Puget Sound. The legislature further finds that the crab fishery in Puget Sound represents a separate and distinct fishery from that of the coastal waters and is limited in quantity and is in need of conservation. The potential for depletion of the crab stocks in these waters is increasing, particularly as crab fishing becomes an attractive alternative to fishermen facing increasing restrictions on commercial salmon fishing.

The legislature finds that the number of commercial fishermen engaged in crab fishing has steadily increased. This factor, combined with advances in fishing and marketing techniques, has resulted in strong

pressures on the supply of crab, unnecessary waste of an important natural resource, and economic loss to the citizens of the state.

The legislature finds that increased regulation of commercial crab fishing is necessary to preserve and efficiently manage the commercial crab fishery in the waters of Puget Sound." [1980 c 133 § 1.]

**75.30.360 Crab taken in offshore waters—Criteria for landing in Washington state—Limitations.** (1) The director shall allow the landing into Washington state of crab taken in offshore waters only if:

(a) The crab are legally caught and landed by fishers with a valid Washington state Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license; or

(b)(i) The director determines that the landing of offshore Dungeness crab by fishers without a Washington state Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license is in the best interest of the coastal crab processing industry; (ii) the director has been requested to allow such landings by at least three Dungeness crab processors; (iii) the landings are permitted only between the dates of December 1st to February 15th inclusively; (iv) only crab fishers commercially licensed to fish by Oregon or California are permitted to land, if the crab was taken with gear that consisted of one buoy attached to each crab pot, and each crab pot was fished individually; (v) the fisher landing the crab has obtained a valid delivery license; and (vi) the decision is made on a case-by-case basis for the sole reason of improving the economic stability of the commercial crab fishery.

(2) Nothing in this section allows the commercial fishing of Dungeness crab in waters within three miles of Washington state by fishers who do not possess a valid Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license. Landings of offshore Dungeness crab by fishers without a valid Dungeness crab—coastal fishery license or a valid Dungeness crab—coastal class B fishery license do not qualify the fisher for such licenses. [1997 c 418 § 2; 1994 c 260 § 3.]

**Finding—Severability—1994 c 260:** See notes following RCW 75.30.350.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 75.30.350.

**75.30.380 Transfer of Dungeness crab—coastal fishery licenses—Fee.** Dungeness crab—coastal fishery licenses are freely transferable on a willing seller-willing buyer basis after paying the transfer fee in RCW 75.28.011. [1997 c 418 § 3; 1994 c 260 § 5.]

**Finding—Severability—1994 c 260:** See notes following RCW 75.30.350.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 75.30.350.

**75.30.390 Coastal crab account—Created—Revenues—Expenditures.** The coastal crab account is created in the custody of the state treasurer. The account shall consist of revenues from fees from the transfer of each Dungeness crab—coastal fishery license assessed under RCW 75.28.011, delivery fees assessed under RCW 75.30.370, and the license surcharge under RCW 75.28.133.

Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures. Funds may be used for coastal crab management activities as provided in RCW 75.30.410. [1997 c 418 § 4; 1994 c 260 § 6.]

**Finding—Severability—1994 c 260:** See notes following RCW 75.30.350.

**75.30.400 Decodified.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 75.50

### SALMON ENHANCEMENT PROGRAM

#### Sections

|           |   |
|-----------|---|
| 75.50.080 | Regional fisheries enhancement groups—Goals.  |
| 75.50.105 | Regional fisheries enhancement groups—Start-up funds.                                     |
| 75.50.125 | Regional fisheries enhancement salmonid recovery account—Created.                         |
| 75.50.160 | Fish passage barrier removal task force—Membership—Recommendations—Report to legislature. |

**75.50.080 Regional fisheries enhancement groups—Goals.** Regional fisheries enhancement groups, consistent with the long-term regional policy statements developed under RCW 75.50.020, shall seek to:

(1) Enhance the salmon and steelhead resources of the state;

(2) Maximize volunteer efforts and private donations to improve the salmon and steelhead resources for all citizens;

(3) Assist the department in achieving the goal to double the state-wide salmon and steelhead catch by the year 2000; and

(4) Develop projects designed to supplement the fishery enhancement capability of the department. [1997 c 389 § 5; 1993 sp.s. c 2 § 47; 1989 c 426 § 4.]

**Findings—1997 c 389:** See note following RCW 75.50.105.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Severability—1989 c 426:** See note following RCW 75.50.070.

**75.50.105 Regional fisheries enhancement groups—Start-up funds.** The department may provide start-up funds to regional fisheries enhancement groups for costs associated with any enhancement project. The regional fisheries enhancement group advisory board and the department shall develop guidelines for providing funds to the regional fisheries enhancement groups. [1997 c 389 § 2.]

**Findings—1997 c 389:** "(1) The legislature finds that:

(a) Currently, many of the salmon stocks on the Washington coast and in Puget Sound are severely depressed and may soon be listed under the federal endangered species act.

(b) Immediate action is needed to reverse the severe decline of this resource and ensure its very survival.

(c) The cooperation and participation of private landowners is crucial in efforts to restore and enhance salmon populations.

(d) Regional fisheries enhancement groups have been exceptionally successful in their efforts to work with private landowners to restore and enhance salmon habitat on private lands.

(e) State funding for regional fisheries enhancement groups has been declining and is a significant limitation to current fisheries enhancement and habitat restoration efforts.

(f) Therefore, a stable funding source is essential to the success of the regional enhancement groups and their efforts to work cooperatively with private landowners to restore salmon resources.

(2) The legislature further finds that:

(a) The increasing population and continued development throughout the state, and the transportation system needed to serve this growth, have exacerbated problems associated with culverts, creating barriers to fish passage.

(b) These barriers obstruct habitat and have resulted in reduced production and survival of anadromous and resident fish at a time when salmonid stocks continue to decline.

(c) Current state laws do not appropriately direct resources for the correction of fish passage obstructions related to transportation facilities.

(d) Current fish passage management efforts related to transportation projects lack necessary coordination on a watershed, regional, and state-wide basis, have inadequate funding, and fail to maximize use of available resources.

(e) Therefore, the legislature finds that the department of transportation and the department of fish and wildlife should work with state, tribal, local government, and volunteer entities to develop a coordinated, watershed-based fish passage barrier removal program." [1997 c 389 § 1.]

**75.50.125 Regional fisheries enhancement salmonid recovery account—Created.** The regional fisheries enhancement salmonid recovery account is created in the state treasury. All receipts from federal sources and moneys from state sources specified by law must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the sole purpose of fisheries enhancement and habitat restoration by regional fisheries enhancement groups. [1997 c 389 § 3.]

**Findings—1997 c 389:** See note following RCW 75.50.105.

**75.50.160 Fish passage barrier removal task force—Membership—Recommendations—Report to legislature.** The department and the department of transportation shall convene a fish passage barrier removal task force. The task force shall consist of one representative each from the department, the department of transportation, the department of ecology, tribes, cities, counties, a business organization, an environmental organization, regional fisheries enhancement groups, and other interested entities as deemed appropriate by the cochairs. The persons representing the department and the department of transportation shall serve as cochairs of the task force and shall appoint members to the task force. The task force shall make recommendations to expand the program in RCW 75.50.170 to identify and expedite the removal of human-made or caused impediments to anadromous fish passage in the most efficient manner practical. Program recommendations shall include a funding mechanism and other necessary mechanisms to coordinate and prioritize state, tribal, local, and volunteer efforts within each water resource inventory area. A priority shall be given to projects that immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. The department or the department of transportation may contract with cities and counties to assist in the identification and removal of impediments to anadromous fish passage.

A report on the recommendations to develop a program to identify and remove fish passage barriers and any additional legislative action needed to implement the program shall be submitted to the appropriate standing committees of

the legislature no later than December 1, 1997. [1997 c 389 § 6; 1995 c 367 § 2.]

**Findings—1997 c 389:** See note following RCW 75.50.105.

**Severability—Effective date—1995 c 367:** See notes following RCW 75.50.150.

## Chapter 75.54

### RECREATIONAL SALMON AND MARINE FISH ENHANCEMENT PROGRAM

#### Sections

75.54.140 Annual recreational surcharge.

**75.54.140 Annual recreational surcharge.** Beginning January 1, 1994, persons who recreationally fish for salmon or marine bottomfish in marine area codes 5 through 13 and Lake Washington and have an annual food fish license shall be assessed an annual recreational surcharge of ten dollars, in addition to other licensing requirements. Persons who recreationally fish for salmon or marine bottomfish in marine area codes 5 through 13 and Lake Washington with a three-consecutive-day personal use food fish license shall be assessed an annual recreational surcharge of five dollars. Funds from the surcharge shall be deposited in the recreational fisheries enhancement account created in RCW 75.54.150, except that the first five hundred thousand dollars shall be deposited in the general fund before June 30, 1995, to repay the appropriation made by section 104, chapter 2, Laws of 1993 sp. sess. [1997 c 197 § 1; 1993 sp.s. c 2 § 97.]

## Title 76

### FORESTS AND FOREST PRODUCTS

#### Chapters

**76.09 Forest practices.**

**76.12 Reforestation.**

#### Chapter 76.09

### FOREST PRACTICES

#### Sections

- 76.09.040 Forest practices regulations—Promulgation—Review of proposed regulations—Hearings—Adoption.
- 76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.
- 76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies.
- 76.09.063 Forest practices permit—Habitat incentives agreement.
- 76.09.065 Forest practices application or notification—Fee.
- 76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review (*as amended by 1997 c 290*).
- 76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chairman—Office—Quorum—Powers and duties—Jurisdiction—Review (*as amended by 1997 c 423*).

- 76.09.240 Class IV forest practices—Counties and cities adopt standards—Administration and enforcement of regulations—Restrictions upon local political subdivisions or regional entities—Exceptions and limitations.
- 76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation.
- 76.09.360 Single multiyear permit.

**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 pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

- (a) Establish minimum standards for forest practices;
- (b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;
- (c) Set forth necessary administrative provisions; and
- (d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter.

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 either the department or the local governmental entity as 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 fish and wildlife and to the counties of the state. After receipt of the proposed forest practices regulations, the department of fish and wildlife 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 34.05 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. [1997 c 173 § 1; 1994 c 264 § 48; 1993 c 443 § 2; 1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**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 and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

**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. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are 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;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

**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 thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

**Class IV:** Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are 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, (d) except on those lands involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental

entity and submitted to the department as part of the application, and/or (e) 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. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, 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. However, 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) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's 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) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, 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) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, 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 and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town 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) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, 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, as provided in chapter 58.17 RCW; or

(ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town 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, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town 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, city, or town objections has expired.



(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town 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) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town 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. [1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies.** The following shall apply to those forest practices administered and enforced by the department and for which the board shall promulgate regulations as provided in this chapter:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.17 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers 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 rules;

(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;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a Class II forest practice is subject to the three-year reforestation requirement.

(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 rules shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices rules 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 84.33 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, town, and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the application or notification does not state that any land covered by the application or notification will be or is intended to be so converted:

(i) For six years after the date of the application the county, city, town, and regional governmental entities shall 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;

(A) The department shall submit to the local governmental entity a copy of the statement of a forest landowner's intention not to convert which shall represent a recognition by the landowner that the six-year moratorium shall be imposed and shall preclude the landowner's ability to obtain development permits while the moratorium is in place. This statement shall be filed by the local governmental entity with the county recording officer, who shall record the documents as provided in chapter 65.04 RCW, except that lands designated as forest lands of long-term commercial significance under chapter 36.70A RCW shall not be recorded due to the low likelihood of conversion. Not recording the

statement of a forest landowner's conversion intention shall not be construed to mean the moratorium is not in effect.

(B) The department shall collect the recording fee and reimburse the local governmental entity for the cost of recording the application.

(C) When harvesting takes place without an application, the local governmental entity shall impose the six-year moratorium provided in (b)(i) of this subsection from the date the unpermitted harvesting was discovered by the department or the local governmental entity.

(D) The local governmental entity shall develop a process for lifting the six-year moratorium, which shall include public notification, and procedures for appeals and public hearings.

(E) The local governmental entity may develop an administrative process for lifting or waiving the six-year moratorium for the purposes of constructing a single-family residence or outbuildings, or both, on a legal lot and building site. Lifting or waiving of the six-year moratorium is subject to compliance with all local ordinances.

(F) The six-year moratorium shall not be imposed on a forest practices application that contains a conversion option harvest plan approved by the local governmental entity unless the forest practice was not in compliance with the approved forest practice permit. Where not in compliance with the conversion option harvest plan, the six-year moratorium shall be imposed from the date the application was approved by the department or the local governmental entity;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute 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 forest product operations within six years after approval of the forest practices without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application or notification shall be signed by the forest landowner and accompanied by a statement signed by the forest landowner indicating his or her intent with respect to conversion and acknowledging that he or she 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) Except as provided in RCW 76.09.350(4), 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 two years 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. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(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 or as required by local regulations. [1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

**Reviser's note:** This section was amended by 1997 c 173 § 3 and by 1997 c 290 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**Effective date—1992 c 52 § 22:** "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**76.09.063 Forest practices permit—Habitat incentives agreement.** When a private landowner is applying for a forest practices permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of fish and wildlife as provided in RCW 77.12.830, the department shall comply with the terms of that agreement when evaluating the permit application. [1997 c 425 § 5.]

**Finding—Intent—1997 c 425:** See note following RCW 77.12.830.

**76.09.065 Forest practices application or notification—Fee.** (1) Effective July 1, 1997, an applicant shall pay an application fee and a recording fee, if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2) For applications and notifications submitted to the department, the application fee shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands

that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

(a) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(b) A conversion option harvest plan approved by the local government [governmental] entity and submitted to the department as part of the forest practices application. All money collected from fees under this subsection shall be deposited in the state general fund.

(3) For applications submitted to the local governmental entity, the fee shall be five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided by the local governmental entity.

(4) Recording fees shall be as provided in chapter 36.18 RCW.

(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department. [1997 c 173 § 4; 1993 c 443 § 5.]

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review (as amended by 1997 c 290).** (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 be compensated in accordance with RCW 43.03.240(=PROVIDED, That). However, 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.

(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))~~ chair, and shall at least biennially thereafter meet and elect or reelect a ~~((chairman))~~ chair.

(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, and the department of fish and wildlife, and the department of ecology with respect to management plans provided for under RCW 76.09.350.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit 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 or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ~~((insure))~~ ensure 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 34.05 RCW pertaining to procedures in adjudicative proceedings. [1997 c 290 § 5; 1989 c 175 § 164; 1984 c 287 § 109; 1979 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.]

**76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chairman—Office—Quorum—Powers and duties—Jurisdiction—Review (as amended by 1997 c 423).** (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 be compensated in accordance with RCW ~~((43.03.240: PROVIDED, That such))~~ 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This 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.

(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 34.05 RCW pertaining to procedures in adjudicative proceedings. [1997 c 423 § 2; 1989 c 175 § 164; 1984 c 287 § 109; 1979 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.]

**Reviser's note:** RCW 76.09.220 was amended twice during the 1997 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Finding—1997 c 423:** "The legislature finds that the functions of the forest practices appeals board have overriding sensitivity and are of importance to the public welfare and operation of state government." [1997 c 423 § 1.]

**Effective date—1997 c 423:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 423 § 3.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

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

**Intent—1979 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.

**76.09.240 Class IV forest practices—Counties and cities adopt standards—Administration and enforcement of regulations—Restrictions upon local political subdivisions or regional entities—Exceptions and limitations.** (1) By December 31, 2001, each county and each city shall adopt ordinances or promulgate regulations setting standards for those Class IV forest practices regulated by local government. The regulations shall: (a) Establish minimum standards for Class IV forest practices; (b) set forth necessary administrative provisions; and (c) establish procedures for the collection and administration of forest practices and recording fees as set forth in this chapter.

(2) Class IV forest practices regulations shall be administered and enforced by the counties and cities that promulgate them.

(3) The forest practices board shall continue to promulgate regulations and the department shall continue to administer and enforce the regulations promulgated by the board in each county and each city for all forest practices as provided in this chapter until such time as, in the opinion of the department, the county or city has promulgated forest practices regulations that meet the requirements as set forth in this section and that meet or exceed the standards set forth by the board in regulations in effect at the time the local regulations are adopted. Regulations promulgated by the county or city thereafter shall be reviewed in the usual manner set forth for county or city rules or ordinances. Amendments to local ordinances must meet or exceed the forest practices rules at the time the local ordinances are amended.

(a) Department review of the initial regulations promulgated by a county or city shall take place upon written request by the county or city. The department, in consultation with the department of ecology, may approve or disapprove the regulations in whole or in part.

(b) Until January 1, 2002, the department shall provide technical assistance to all counties or cities that have adopted forest practices regulations acceptable to the department and

that have assumed regulatory authority over all Class IV forest practices within their jurisdiction.

(c) Decisions by the department approving or disapproving the initial regulations promulgated by a county or city may be appealed to the forest practices appeals board, which has exclusive jurisdiction to review the department's approval or disapproval of regulations promulgated by counties and cities.

(4) For those forest practices over which the board and the department maintain regulatory authority 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:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only: (i) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands have been or will be converted to a use other than commercial forest product production; or (ii) on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW: 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;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971". [1997 c 173 § 5; 1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

**76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation.** The legislature recognizes the importance of providing the greatest diversity of habitats, particularly riparian, wetland, and old growth habitats, and of assuring the greatest diversity of species within those habitats for the survival and reproduction of enough individuals to maintain the native wildlife of Washington forest lands. The legislature also recognizes the importance of long-term habitat productivity for natural and wild fish, for the protection of hatchery water supplies, and for the protection of water quality and quantity to meet the needs of people, fish, and wildlife. The legislature recognizes the importance of maintaining and enhancing fish and wildlife habitats capable of sustaining the commercial and noncommercial uses of fish and wildlife. The legislature further recognizes the importance of the continued growth and development of the state's forest products industry which has a vital stake in the long-term productivity of both the public and private forest land base.

The development of a landscape planning system would help achieve these goals. Landowners and resource managers should be provided incentives to voluntarily develop long-term multispecies landscape management plans that will provide protection to public resources. Because landscape planning represents a departure from the use of standard

baseline rules and may result in unintended consequences to both the affected habitats and to a landowner's economic interests, the legislature desires to establish up to seven experimental pilot programs to gain experience with landscape planning that may prove useful in fashioning legislation of a more general application.

(1) Until December 31, 2000, the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, is granted authority to select not more than seven pilot projects for the purpose of developing individual landowner multispecies landscape management plans.

(a) Pilot project participants must be selected by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, no later than October 1, 1997.

(b) The number and the location of the pilot projects are to be determined by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, and should be selected on the basis of risk to the habitat and species, variety and importance of species and habitats in the planning area, geographic distribution, surrounding ownership, other ongoing landscape and watershed planning activities in the area, potential benefits to water quantity and quality, financial and staffing capabilities of participants, and other factors that will contribute to the creation of landowner multispecies landscape planning efforts.

(c) Each pilot project shall have a landscape management plan with the following elements:

(i) An identification of public resources selected for coverage under the plan and measurable objectives for the protection of the selected public resources;

(ii) A termination date of not later than 2050;

(iii) A general description of the planning area including its geographic location, physical and biological features, habitats, and species known to be present;

(iv) An identification of the existing forest practices rules that will not apply during the term of the plan;

(v) Proposed habitat management strategies or prescriptions;

(vi) A projection of the habitat conditions likely to result from the implementation of the specified management strategies or prescriptions;

(vii) An assessment of habitat requirements and the current habitat conditions of representative species included in the plan;

(viii) An assessment of potential or likely impacts to representative species resulting from the prescribed forest practices;

(ix) A description of the anticipated benefits to those species or other species as a result of plan implementation;

(x) A monitoring plan;

(xi) Reporting requirements including a schedule for review of the plan's performance in meeting its objectives;

(xii) Conditions under which a plan may be modified, including a procedure for adaptive management;

(xiii) Conditions under which a plan may be terminated;

(xiv) A procedure for adaptive management that evaluates the effectiveness of the plan to meet its measurable public resources objectives, reflects changes in the best

available science, and provides changes to its habitat management strategies, prescriptions, and hydraulic project standards to the extent agreed to in the plan and in a timely manner and schedule;

(xv) A description of how the plan relates to publicly available plans of adjacent federal, state, tribal, and private timberland owners; and

(xvi) A statement of whether the landowner intends to apply for approval of the plan under applicable federal law.

(2) Until December 31, 2000, the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, shall approve a landscape management plan and enter into a binding implementation agreement with the landowner when such departments find, based upon the best scientific data available, that:

(a) The plan contains all of the elements required under this section including measurable public resource objectives;

(b) The plan is expected to be effective in meeting those objectives;

(c) The landowner has sufficient financial resources to implement the management strategies or prescriptions to be implemented by the landowner under the plan;

(d) The plan will:

(i) Provide better protection than current state law for the public resources selected for coverage under the plan considered in the aggregate; and

(ii) Compared to conditions that could result from compliance with current state law:

(A) Not result in poorer habitat conditions over the life of the plan for any species selected for coverage that is listed as threatened or endangered under federal or state law, or that has been identified as a candidate for such listing, at the time the plan is approved; and

(B) Measurably improve habitat conditions for species selected for special consideration under the plan;

(e) The plan shall include watershed analysis or provide for a level of protection that meets or exceeds the protection that would be provided by watershed analysis, if the landowner selects fish or water quality as a public resource to be covered under the plan. Any alternative process to watershed analysis would be subject to timely peer review;

(f) The planning process provides for a public participation process during the development of the plan, which shall be developed by the department in cooperation with the landowner.

The management plans must be submitted to the department and the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, no later than March 1, 2000. The department shall provide an opportunity for public comment on the proposed plan. The comment period shall not be less than forty-five days. The department shall approve or reject plans within one hundred twenty days of submittal by the landowner of a final plan. The decision by the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner has elected to cover water quality in the plan, to approve or disapprove the management plan is subject to the environmental review process of chapter 43.21C RCW, provided that any public comment period provided for under chapter 43.21C RCW

shall run concurrently with the public comment period provided in this subsection (2).

(3) After a landscape management plan is adopted:

(a) Forest practices consistent with the plan need not comply with:

(i) The specific forest practices rules identified in the plan; and

(ii) Any forest practice rules and policies adopted after the approval of the plan to the extent that the rules:

(A) Have been adopted primarily for the protection of a public resource selected for coverage under the plan; or

(B) Provide for procedural or administrative obligations inconsistent with or in addition to those provided for in the plan with respect to those public resources; and

(b) If the landowner has selected fish as one of the public resources to be covered under the plan, the plan shall serve as the hydraulic project approval for the life of the plan, in compliance with RCW 75.20.100.

(4) The department is authorized to issue a single landscape level permit valid for the life of the plan to a landowner who has an approved landscape management plan and who has requested a landscape permit from the department. Landowners receiving a landscape level permit shall meet annually with the department and the department of fish and wildlife, and the department of ecology where water quality has been selected as a public resource to be covered under the plan, to review the specific forest practices activities planned for the next twelve months and to determine whether such activities are in compliance with the plan. The departments will consult with the affected Indian tribes and other interested parties who have expressed an interest in connection with the review. The landowner is to provide ten calendar days' notice to the department prior to the commencement of any forest practices authorized under a landscape level permit. The landscape level permit will not impose additional conditions relating to the public resources selected for coverage under the plan beyond those agreed to in the plan. For the purposes of chapter 43.21C RCW, forest practices conducted in compliance with an approved plan are deemed not to have the potential for a substantial impact on the environment as to any public resource selected for coverage under the plan.

(5) Except as otherwise provided in a plan, the agreement implementing the landscape management plan is an agreement that runs with the property covered by the approved landscape management plan and the department shall record notice of the plan in the real property records of the counties in which the affected properties are located. Prior to its termination, no plan shall permit forest land covered by its terms to be withdrawn from such coverage, whether by sale, exchange, or other means, nor to be converted to nonforestry uses except to the extent that such withdrawal or conversion would not measurably impair the achievement of the plan's stated public resource objectives. If a participant transfers all or part of its interest in the property, the terms of the plan still apply to the new landowner for the plan's stated duration unless the plan is terminated under its terms or unless the plan specifies the conditions under which the terms of the plan do not apply to the new landowner.

(6) The departments of natural resources, fish and wildlife, and ecology shall seek to develop memorandums of

agreements with federal agencies and affected Indian tribes relating to tribal issues in the landscape management plans. The departments shall solicit input from affected Indian tribes in connection with the selection, review, and approval of any landscape management plan. If any recommendation is received from an affected Indian tribe and is not adopted by the departments, the departments shall provide a written explanation of their reasons for not adopting the recommendation.

(7) The department is directed to report to the forest practices board annually through the year 2000, but no later than December 31st of each year, on the status of each pilot project. The department is directed to provide to the forest practices board, no later than December 31, 2000, an evaluation of the pilot projects including a determination if a permanent landscape planning process should be established along with a discussion of what legislative and rule modifications are necessary. [1997 c 290 § 1.]

**76.09.360 Single multiyear permit.** The department together with the department of fish and wildlife, and the department of ecology relating to water quality protection, shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices in a single multiyear permit to be jointly issued by the departments and the departments shall report their findings to the legislature not later than December 31, 2000. [1997 c 290 § 2.]

## Chapter 76.12 REFORESTATION

### Sections

76.12.030 Deed of county land to department—Disposition of proceeds.

**76.12.030 Deed of county land to department—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 department deems such land necessary for the purposes of this chapter, the county shall, upon demand by the department, deed such land to the department and the land shall become a part of the state forest lands.

Such land shall be held in trust and administered and protected by the department 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 with a population of less

than sixteen thousand shall first be applied to the reduction of any indebtedness existing in the current expense fund of such county during the year of payment. [1997 c 370 § 1; 1991 c 363 § 151; 1988 c 128 § 24; 1981 2nd ex.s. c 4 § 4; 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.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.85.130.

## Title 77

### GAME AND GAME FISH

#### Chapters

- 77.12 Powers and duties.
- 77.16 Prohibited acts and penalties.
- 77.21 Penalties—Proceedings.
- 77.32 Licenses.

#### Chapter 77.12

#### POWERS AND DUTIES

##### Sections

- 77.12.790 Eastern Washington pheasant enhancement program—Purpose.
- 77.12.800 Pheasant hunting—Opportunities for juvenile hunters.
- 77.12.810 Annual surcharge.
- 77.12.820 Eastern Washington pheasant enhancement account—Created—Use of moneys.
- 77.12.830 Habitat incentives program—Goal—Requirements of agreement—Application evaluation factors.

**77.12.790 Eastern Washington pheasant enhancement program—Purpose.** There is created within the department the eastern Washington pheasant enhancement program. The purpose of the program is to improve the harvest of pheasants by releasing pen-reared rooster pheasants on sites accessible for public hunting and by providing grants for habitat enhancement on public or private lands under agreement with the department. The department may either purchase rooster pheasants from private contractors, or produce rooster pheasants from department-sanctioned cooperative projects, whichever is less expensive, provided that the pheasants released meet minimum department standards for health and maturity. Any surplus hen pheasants from pheasant farms or projects operated by the department or the department of corrections for this enhancement program shall be made available to landowners who voluntarily open their lands to public pheasant hunting. Pheasants produced for the eastern Washington pheasant enhancement program must not detrimentally affect the production or operation of the department's western Washington pheasant release program. The release of pheasants for hunting purposes must not conflict with or supplant other department efforts to improve upland bird habitat or naturally produced upland birds. [1997 c 422 § 2.]

**Findings—1997 c 422:** "The legislature finds that pheasant populations in eastern Washington have greatly decreased from their historic high

levels and that pheasant hunting success rates have plummeted. The number of pheasant hunters has decreased due to reduced hunting success. There is an opportunity to enhance the pheasant population by release of pen-reared pheasants and habitat enhancements to create increased hunting opportunities on publicly owned and managed lands." [1997 c 422 § 1.]

**77.12.800 Pheasant hunting—Opportunities for juvenile hunters.** The commission must establish special pheasant hunting opportunities for juvenile hunters in eastern Washington for the 1998 season and future seasons. [1997 c 422 § 3.]

**Findings—1997 c 422:** See note following RCW 77.12.790.

**77.12.810 Annual surcharge.** Beginning September 1, 1997, a person who hunts for pheasant in eastern Washington must pay an annual surcharge of ten dollars, in addition to other licensing requirements. Funds from the surcharge must be deposited in the eastern Washington pheasant enhancement account created in RCW 77.12.820. [1997 c 422 § 4.]

**Findings—1997 c 422:** See note following RCW 77.12.790.

**77.12.820 Eastern Washington pheasant enhancement account—Created—Use of moneys.** The eastern Washington pheasant enhancement account is created in the custody of the state treasurer. All receipts under RCW 77.12.810 must be deposited in the account. Moneys in the account are subject to legislative appropriation and shall be used for the purpose of funding the eastern Washington pheasant enhancement program. The department may use moneys from the account to improve pheasant habitat or to purchase or produce pheasants. Not less than eighty percent of expenditures from the account must be used to purchase or produce pheasants. The eastern Washington pheasant enhancement account funds must not be used for the purchase of land. The account may be used to offer grants to improve pheasant habitat on public or private lands that are open to public hunting. The department may enter partnerships with private landowners, nonprofit corporations, cooperative groups, and federal or state agencies for the purposes of pheasant habitat enhancement in areas that will be available for public hunting. [1997 c 422 § 5.]

**Findings—1997 c 422:** See note following RCW 77.12.790.

**77.12.830 Habitat incentives program—Goal—Requirements of agreement—Application evaluation factors.** (1) Beginning in January 1998, the department of fish and wildlife and the department of natural resources shall implement a habitat incentives program based on the recommendations of federally recognized Indian tribes, landowners, the regional fisheries enhancement groups, the timber, fish, and wildlife cooperators, and other interested parties. The program shall allow a private landowner to enter into an agreement with the departments to enhance habitat on the landowner's property for food fish, game fish, or other wildlife species. In exchange, the landowner shall receive state regulatory certainty with regard to future applications for hydraulic project approval or a forest practices permit on the property covered by the agreement. The overall goal of the program is to provide a mechanism that facilitates habitat development on private property while



avoiding an adverse state regulatory impact to the landowner at some future date. A single agreement between the departments and a landowner may encompass up to one thousand acres. A landowner may enter into multiple agreements with the departments, provided that the total acreage covered by such agreements with a single landowner does not exceed ten thousand acres. The departments are not obligated to enter into an agreement unless the departments find that the agreement is in the best interest of protecting fish or wildlife species or their habitat.

(2) A habitat incentives agreement shall be in writing and shall contain at least the following: A description of the property covered by the agreement, an expiration date, a description of the condition of the property prior to the implementation of the agreement, and other information needed by the landowner and the departments for future reference and decisions.

(3) As part of the agreement, the department of fish and wildlife may stipulate the factors that will be considered when the department evaluates a landowner's application for hydraulic project approval under RCW 75.20.100 or 75.20.103 on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with the department of natural resources and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of hydraulic project approval shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(4) As part of the agreement, the department of natural resources may stipulate the factors that will be considered when the department evaluates a landowner's application for a forest practices permit under chapter 76.09 RCW on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with the department of fish and wildlife and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of forest practices permits shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(5) The agreement is binding on and may be used by only the landowner who entered into the agreement with the department. The agreement shall not be appurtenant with the land. However, if a new landowner chooses to maintain the habitat enhancement efforts on the property, the new landowner and the departments may jointly choose to retain the agreement on the property.

(6) If the departments receive multiple requests for agreements with private landowners under the habitat incentives program, the departments shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources. [1997 c 425 § 3.]

**Finding—Intent—1997 c 425:** "In an effort to increase the amount of habitat available for fish and wildlife, the legislature finds that it is desirable for the department of fish and wildlife, the department of natural resources, and other interested parties to work closely with private landowners to achieve habitat enhancements. In some instances, private landowners avoid enhancing habitat because of a concern that the presence of fish or wildlife may make future land management more difficult. It is the intent of this act to provide a mechanism that facilitates habitat development while avoiding an adverse impact on the landowner at a later

date. The habitat incentives program is not intended to supercede any federal laws." [1997 c 425 § 1.]

## Chapter 77.16

### PROHIBITED ACTS AND PENALTIES

#### Sections

77.16.360 Unlawful practices—Black bear baiting—Exceptions—  
Illegal hunting—Use of dogs—Exceptions—Penalties.

**77.16.360 Unlawful practices—Black bear baiting—Exceptions—Illegal hunting—Use of dogs—Exceptions—Penalties.** (1) Notwithstanding the provisions of RCW 77.12.240 and \*77.12.265 or other provisions of law, it is unlawful to take, hunt, or attract black bear with the aid of bait.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear with the aid of bait by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety.

(b) Nothing in this subsection shall be construed to prevent the establishment and operation of feeding stations for black bear in order to prevent damage to commercial timberland.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of bait to attract black bear for scientific purposes.

(d) As used in this subsection, "bait" means a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or intend to hunt them.

(2) Notwithstanding RCW 77.12.240 or any other provisions of law, it is unlawful to hunt or pursue black bear, cougar, bobcat, or lynx with the aid of a dog or dogs.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear, cougar, bobcat, or lynx with the aid of a dog or dogs by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety. A dog or dogs may be used by the owner or tenant of real property consistent with a permit issued and conditioned by the director under \*RCW 77.12.265.

(b) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the pursuit of black bear, cougar, bobcat, or lynx for scientific purposes.

(3) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor. In addition to appropriate criminal penalties, the director shall revoke the hunting license of a person who violates subsection (1) or (2) of this section and a hunting license shall not be issued for a period of five years following the revocation. Following a subsequent violation of subsection (1) or (2) of this section by the same person, a hunting license shall not be

issued to the person at any time. [1997 c 1 § 1 (Initiative Measure No. 655, approved November 5, 1996).]

\*Reviser's note: RCW 77.12.265 was repealed by 1996 c 54 § 12, effective July 1, 1996. See chapter 77.36 RCW.

Severability—1997 c 1 (Initiative Measure No. 655): "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." [1997 c 1 § 2 (Initiative Measure No. 655, approved November 5, 1996).]

Chapter 77.21

PENALTIES—PROCEEDINGS

Sections

77.21.070 Illegal killing or possession of wildlife—Restitution to state—Amounts—Bail—License revoked.

77.21.070 Illegal killing or possession of wildlife—Restitution to state—Amounts—Bail—License revoked.

(1) Whenever a person is convicted of illegal killing or possession of wildlife listed in this subsection, the convicting court shall order the person to pay restitution to the state in the following amounts for each animal killed or possessed:

- (a) Moose, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission, except for mountain caribou and grizzly bear as listed under (d) of this subsection \$4,000.00
(b) Elk, deer, black bear, and cougar \$2,000.00
(c) Trophy animal elk and deer \$6,000.00
(d) Mountain caribou, grizzly bear, [and] trophy animal mountain sheep \$12,000.00

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, and the payment of a fine. No court may establish bail for illegal possession of wildlife listed in subsection (1) of this section in an amount less than the bail established for hunting during the closed season plus the restitution value of wildlife set forth in subsection (1) of this section.

(3) For the purpose of this section a "trophy animal" is:

- (a) A buck deer with four or more antler points on either side;
(b) A bull elk with five or more antler points on either side; or
(c) A mountain sheep with a horn curl of three-quarter curl or greater.

(4) If two or more persons are convicted of illegally possessing wildlife listed in this section, the restitution amount shall be imposed upon them jointly and severally.

(5) The restitution amount provided in this section shall be imposed in addition to and regardless of any penalty, including fines, or costs, that is provided for violating any provision of Title 77 RCW. The restitution required by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(6) A defaulted restitution or any installment payment thereof may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence.

(7) A person assessed a restitution under this section shall have his or her hunting license revoked and all hunting privileges suspended until the restitution is paid through the registry of the court in which the restitution was assessed. [1997 c 226 § 2; 1989 c 11 § 28; 1987 c 506 § 74; 1986 c 318 § 1; 1984 c 258 § 336; 1983 1st ex.s. c 8 § 3.]

Findings—1997 c 226: "The legislature finds that wildlife is of great ecological, recreational, aesthetic, and economic value to the people of the state. The legislature further finds that the illegal taking and possession of certain valuable wildlife species is increasing at an alarming rate and the state should be paid restitution for the loss of individual members of these wildlife species " [1997 c 226 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1986 c 318: "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 June 30, 1986." [1986 c 318 § 2.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Findings—1983 1st ex.s. c 8: "The legislature finds that wildlife is of great ecological, recreational, esthetic, and economic value to the people of the state of Washington. It further finds that the illegal taking and possession of certain valuable wildlife species is increasing at an alarming rate and that the state should be reimbursed for the loss of individual wildlife of these species in the amounts specified in section 3 of this act." [1983 1st ex.s. c 8 § 1.] "Section 3 of this act" consists of the enactment of RCW 77.21.070.

Chapter 77.32

LICENSES

Sections

- 77.32.014 Licenses, tags, and stamps—Invalid for noncompliance with support order.
77.32.101 Hunting and fishing licenses—Fees.
77.32.320 Transport tags for game.
77.32.340 Transport tag fees.

77.32.014 Licenses, tags, and stamps—Invalid for noncompliance with support order. (1) Licenses, tags, and stamps issued pursuant to this chapter shall be invalid for any period in which a person is certified by the department of social and health services or a court of competent jurisdiction as a person in noncompliance with a support order or \*residential or visitation order. Wildlife agents and ex officio wildlife agents shall enforce this section through checks of the department of licensing's computer data base. A listing on the department of licensing's data base that an individual's license is currently suspended pursuant to RCW 46.20.291(7) shall be prima facie evidence that the individual is in noncompliance with a support order or \*residential or visitation order. Presentation of a written release issued by the department of social and health services stating that the person is in compliance with an order shall serve as prima facie proof of compliance with a support order, \*residential order, or visitation order.

(2) It is unlawful to purchase, obtain, or possess a license required by this chapter during any period in which a license is suspended. [1997 c 58 § 881.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**77.32.101 Hunting and fishing licenses—Fees.** (1) A combination hunting and fishing license allows a resident holder to hunt, and to fish for game fish throughout the state. The fee for this license is twenty-nine dollars.

(2) A hunting license allows the holder to hunt throughout the state. The fee for this license is fifteen dollars for residents and one hundred fifty dollars for nonresidents.

(3) A fishing license allows the holder to fish for game fish throughout the state. The fee for this license is seventeen dollars for residents fifteen years of age or older and under seventy years of age, three dollars for residents seventy years of age or older, and forty-eight dollars for nonresidents fifteen years of age or older.

The license fee for a nonresident juvenile under fifteen years of age is twenty dollars unless the juvenile is fishing with an adult who holds a current game fish license, in which case there is no license fee.

(4) A steelhead fishing license allows the holder of a combination hunting and fishing license or a fishing license issued under this section to fish for steelhead throughout the state. The fee for this license is eighteen dollars.

(5) A juvenile steelhead license allows residents under fifteen years of age and nonresidents under fifteen years of age who hold a fishing license to fish for steelhead throughout the state. The fee for this license is six dollars and entitles the holder to take up to five steelhead at which time another juvenile steelhead license may be purchased. Any person who purchases a juvenile steelhead license is prohibited from purchasing a steelhead license for the same calendar year. [1997 c 395 § 1; 1994 c 255 § 11; 1991 sp.s. c 7 § 1; 1985 c 464 § 2; 1981 c 310 § 20; 1980 c 78 § 110; 1975 1st ex.s. c 15 § 20.]

**Effective date—1994 c 255 §§ 1-13:** See note following RCW 77.32.092.

**Effective date—1991 sp.s. c 7:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 7 § 14.]

**Effective date—1985 c 464:** See note following RCW 77.32.060.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**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.]

**77.32.320 Transport tags for game.** (1) In addition to a basic hunting license, a separate transport tag is required to hunt deer, elk, black bear, cougar, sheep, mountain goat, moose, or wild turkey. However, a transport tag may not be required to hunt black bear or cougar when, under conditions set out under RCW 77.32.340, the commission determines that for the purposes of achieving harvest management goals for black bear or cougar, that transport tags shall be available at no cost.

(2) A transport tag may only be obtained subsequent to the purchase of a valid hunting license and must have permanently affixed to it the hunting license number.

(3) Persons who kill deer, elk, bear, cougar, mountain goat, sheep, moose, or wild turkey shall immediately validate and attach their own transport tag to the carcass as provided by rule of the director.

(4) Transport tags required by this section expire on March 31st following the date of issuance. [1997 c 114 § 1; 1990 c 84 § 4; 1987 c 506 § 87; 1981 c 310 § 8.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**77.32.340 Transport tag fees.** Fees for transport tags shall be as follows:

(1) The fee for a resident deer tag is eighteen dollars. The fee for a nonresident deer tag is sixty dollars.

(2) The fee for a resident elk tag is twenty-four dollars. The fee for a nonresident elk tag is one hundred twenty dollars.

(3) The fee for a resident and nonresident bear tag shall be established by the commission in an amount not to exceed eighteen dollars and one hundred eighty dollars, respectively. Should the commission choose to make black bear transport tags available at no cost, then the commission may determine that for purposes of achieving species harvest management goals that a transport tag is not required to hunt black bear.

(4) The fee for a resident and nonresident cougar tag shall be established by the commission in an amount not to exceed twenty-four dollars and three hundred sixty dollars, respectively. Should the commission choose to make cougar transport tags available at no cost, then the commission may determine that for purposes of achieving species harvest management goals that a transport tag is not required to hunt cougar.

(5) The fee for a mountain goat tag is sixty dollars for residents and one hundred eighty dollars for nonresidents. The fee shall be paid at the time of application. Applicants who are not selected for a mountain goat special season permit shall receive a refund of this fee, less five dollars.

(6) The fee for a sheep tag is ninety dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a sheep special season permit shall receive a refund of this fee, less five dollars.

(7) The fee for a moose tag is one hundred eighty dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a moose special season permit shall receive a refund of this fee, less five dollars.

(8) The fee for a wild turkey tag is eighteen dollars for residents and sixty dollars for nonresidents.

(9) The fee for a lynx tag is twenty-four dollars for residents and three hundred sixty dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a lynx special season permit shall receive a refund of this fee, less five dollars. [1997 c 114 § 2; 1991 sp.s. c 7 § 8; 1990 c 84 § 5; 1985 c 464 § 8; 1984 c 240 § 5; 1981 c 310 § 11.]

**Effective date—1991 sp.s. c 7:** See note following RCW 77.32.101.

**Effective date—1985 c 464:** See note following RCW 77.32.060.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

## Title 78

### MINES, MINERALS, AND PETROLEUM

#### Chapters

- 78.40** Coal mining code.  
**78.44** Surface mining.  
**78.56** Metals mining and milling operations.

#### Chapter 78.40

##### COAL MINING CODE

#### Sections

78.40.010 through 78.40.797 Repealed.

**78.40.010 through 78.40.797 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

#### Chapter 78.44

##### SURFACE MINING

#### Sections

- 78.44.031 Definitions.  
 78.44.050 Exclusive authority to regulate reclamation—Department may delegate enforcement authority to counties, cities, towns—Other laws not affected.  
 78.44.081 Reclamation permits required—Applications.  
 78.44.085 Application fee—Annual permit fee—Appeals.  
 78.44.087 Performance security required—Department authority.  
 78.44.091 Reclamation plans—Approval process.  
 78.44.151 Reclamation plans—Modification, when required—SEPA.  
 78.44.310 Reclamation consulting—No cost service.

**78.44.031 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Approved subsequent use" means the post surface-mining land use contained in an approved reclamation plan and approved by the local land use authority.

(2) "Completion of surface mining" means the cessation of mining and directly related activities in any segment of a surface mine that occurs when essentially all minerals that can be taken under the terms of the reclamation permit have been depleted except minerals required to accomplish reclamation according to the approved reclamation plan.

(3) "Department" means the department of natural resources.

(4) "Determination" means any action by the department including permit issuance, reporting, reclamation plan approval or modification, permit transfers, orders, fines, or refusal to issue permits.

(5) "Disturbed area" means any place where activities clearly in preparation for, or during, surface mining have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: Working faces, water bodies created by mine-related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, and equipment staging areas.

Disturbed areas do not include:

(a) Surface mine access roads unless these have characteristics of topography, drainage, slope stability, or ownership that, in the opinion of the department, make reclamation necessary; and

(b) Lands that have been reclaimed to all standards outlined in this chapter, rules of the department, any applicable SEPA document, and the approved reclamation plan.

(6) "Miner" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, including every public or governmental agency engaged in mining from the surface.

(7) "Minerals" means clay, coal, gravel, industrial minerals, metallic substances, peat, sand, stone, topsoil, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction use.

(8) "Operations" means all mine-related activities, exclusive of reclamation, that include, but are not limited to activities that affect noise generation, air quality, surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of local government and local ordinances, or other state laws.

Operations specifically include:

(a) The mining or extraction of rock, stone, gravel, sand, earth, and other minerals;

(b) Blasting, equipment maintenance, sorting, crushing, and loading;

(c) On-site mineral processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;

(d) Transporting minerals to and from the mine, on site road maintenance, road maintenance for roads used extensively for surface mining activities, traffic safety, and traffic control.

(9) "Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

(10) "Permit holder" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining and/or the operation of surface mines, whether individually, jointly, or through subsidiaries, agents, employ-

ees, operators, or contractors who holds a state reclamation permit.

(11) "Reclamation" means rehabilitation for the appropriate future use of disturbed areas resulting from surface mining including areas under associated mineral processing equipment and areas under stockpiled materials. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific surface mine, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

(12) "Reclamation setbacks" include those lands along the margins of surface mines wherein minerals and overburden shall be preserved in sufficient volumes to accomplish reclamation according to the approved plan and the minimum reclamation standards. Maintenance of reclamation setbacks may not preclude other mine-related activities within the reclamation setback.

(13) "Recycling" means the reuse of minerals or rock products.

(14) "Screening" consists of vegetation, berms or other topography, fencing, and/or other screens that may be required to mitigate impacts of surface mining on adjacent properties and/or the environment.

(15) "Segment" means any portion of the surface mine that, in the opinion of the department:

(a) Has characteristics of topography, drainage, slope stability, ownership, mining development, or mineral distribution, that make reclamation necessary;

(b) Is not in use as part of surface mining and/or related activities; and

(c) Is larger than seven acres and has more than five hundred linear feet of working face except as provided in a segmental reclamation agreement approved by the department.

(16) "SEPA" means the state environmental policy act, chapter 43.21C RCW and rules adopted thereunder.

(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals from the surface results in:

(i) More than three acres of disturbed area;

(ii) Mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or

(iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.

(b) Surface mines include areas where mineral extraction from the surface occurs by the auger method or by reworking mine refuse or tailings, when these activities exceed the size or height thresholds listed in (a) of this subsection.

(c) Surface mining shall exclude excavations or grading used:

(i) Primarily for on-site construction, on-site road maintenance, or on-site landfill construction;

(ii) For the purpose of public safety or restoring the land following a natural disaster;

(iii) For the purpose of removing stockpiles;

(iv) For forest or farm road construction or maintenance on site or on contiguous lands;

(v) Primarily for public works projects if the mines are owned or primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area;

(vi) For sand authorized by RCW 43.51.685; and

(vii) For underground mines.

(18) "Topsoil" means the naturally occurring upper part of a soil profile, including the soil horizon that is rich in humus and capable of supporting vegetation together with other sediments within four vertical feet of the ground surface. [1997 c 142 § 1; 1993 c 518 § 4.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.050 Exclusive authority to regulate reclamation—Department may delegate enforcement authority to counties, cities, towns—Other laws not affected.** The department shall have the exclusive authority to regulate surface mine reclamation. No county, city, or town may require for its review or approval a separate reclamation plan or application. The department may, however, delegate some or all of its enforcement authority by contractual agreement to a county, city, or town that employs personnel who are, in the opinion of the department, qualified to enforce plans approved by the department. All counties, cities, or towns shall have the authority to zone surface mines and adopt ordinances regulating operations as provided in this chapter, except that county, city, or town operations ordinances may be preempted by the department during the emergencies outlined in RCW 78.44.200 and related rules.

This chapter shall not alter or preempt any provisions of the state fisheries laws (Title 75 RCW), the state water allocation and use laws (chapters 90.03 and 90.44 RCW), the state water pollution control laws (chapter 90.48 RCW), the state wildlife laws (Title 77 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C RCW), state growth management (chapter 36.70A RCW), state drinking water laws (chapters 43.20 and 70.119A RCW), or any other state statutes. [1997 c 185 § 1; 1993 c 518 § 7; 1970 ex.s. c 64 § 6.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.081 Reclamation permits required—Applications.** After July 1, 1993, no miner or permit holder may engage in surface mining without having first obtained a reclamation permit from the department. Operating permits issued by the department between January 1, 1971, and June 30, 1993, shall be considered reclamation permits. A separate permit shall be required for each noncontiguous surface mine. The reclamation permit shall consist of the permit forms and any exhibits attached thereto. The permit holder shall comply with the provisions of the reclamation permit unless waived and explained in writing by the department.

Prior to receiving a reclamation permit, an applicant must submit an application on forms provided by the department that shall contain the following information and shall be considered part of the reclamation permit:

(1) Name and address of the legal landowner, or purchaser of the land under a real estate contract;

(2) The name of the applicant and, if the applicants are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;

(3) A reasonably accurate description of the minerals to be surface mined;

(4) Type of surface mining to be performed;

(5) Estimated starting date, date of completion, and date of completed reclamation of surface mining;

(6) Size and legal description of the permit area and maximum lateral and vertical extent of the disturbed area;

(7) Expected area to be disturbed by surface mining during (a) the next twelve months, and (b) the following twenty-four months;

(8) Any applicable SEPA documents; and

(9) Other pertinent data as required by the department.

The reclamation permit shall be granted for the period required to deplete essentially all minerals identified in the reclamation permit on the land covered by the reclamation plan. The reclamation permit shall be valid until the reclamation is complete unless the permit is canceled by the department. [1997 c 192 § 1; 1993 c 518 § 11.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

#### **78.44.085 Application fee—Annual permit fee—**

**Appeals.** (1) An applicant for a public or private reclamation permit shall pay an application fee to the department before being granted a surface mining permit. The amount of the application fee shall be six hundred fifty dollars.

(2) After June 30, 1993, each public or private permit holder shall pay an annual permit fee of six hundred fifty dollars. The annual permit fee shall be payable to the department on the first anniversary of the permit date and each year thereafter. Annual fees paid by a county for mines used exclusively for public works projects and having less than seven acres of disturbed area per mine shall not exceed one thousand dollars. Annual fees are waived for all mines used primarily for public works projects if the mines are owned and primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area.

(3) Appeals from any determination of the department shall not stay the requirement to pay any annual permit fee. Failure to pay the annual fee may constitute grounds for an order to suspend surface mining or cancellation of the reclamation permit as provided in this chapter.

(4) All fees collected by the department shall be deposited into the surface mining reclamation account.

(5) If the department delegates enforcement responsibilities to a county, city, or town, the department may allocate funds collected under this section to the county, city, or town. [1997 c 413 § 1; 1996 c 70 § 1; 1993 c 518 § 14.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010

#### **78.44.087 Performance security required—**

**Department authority.** (1) The department shall not issue a reclamation permit until the applicant has deposited with

the department an acceptable performance security on forms prescribed and furnished by the department. A public or governmental agency shall not be required to post performance security.

(2) This performance security may be:

(a) Bank letters of credit acceptable to the department;

(b) A cash deposit;

(c) Negotiable securities acceptable to the department;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank on an assignment form prescribed by the department;

(f) Assignments of interests in real property within the state of Washington; or

(g) A corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW and authorized by the department.

(3) The performance security shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules adopted under it.

(4) The department shall have the authority to determine the amount of the performance security using a standardized performance security formula developed by the department. The amount of the security shall be determined by the department and based on the estimated costs of completing reclamation according to the approved reclamation plan or minimum standards and related administrative overhead for the area to be surface mined during (a) the next twelve-month period, (b) the following twenty-four months, and (c) any previously disturbed areas on which the reclamation has not been satisfactorily completed and approved.

(5) The department may increase or decrease the amount of the performance security at any time to compensate for a change in the disturbed area, the depth of excavation, a modification of the reclamation plan, or any other alteration in the conditions of the mine that affects the cost of reclamation. The department may, for any reason, refuse any performance security not deemed adequate.

(6) Liability under the performance security shall be maintained until reclamation is completed according to the approved reclamation plan to the satisfaction of the department unless released as hereinafter provided. Liability under the performance security may be released only upon written notification by the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute performance security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

(7) Any interest or appreciation on the performance security shall be held by the department until reclamation is completed to its satisfaction. At such time, the interest shall be remitted to the permit holder; except that such interest or appreciation may be used by the department to effect reclamation in the event that the permit holder fails to comply with the provisions of this chapter and the costs of reclamation exceed the face value of the performance security.

(8) No other state agency or local government other than the department shall require performance security for the purposes of surface mine reclamation. The department

may enter into written agreements with federal agencies in order to avoid redundant bonding of surface mines straddling boundaries between federally controlled and other lands within Washington state.

(9) When acting in its capacity as a regulator, no other state agency or local government may require a surface mining operation regulated under this chapter to post performance security unless that state agency or local government has express statutory authority to do so. A state agency's or local government's general authority to protect the public health, safety, and welfare does not constitute express statutory authority to require a performance security. However, nothing in this section prohibits a state agency or local government from requiring a performance security when the state agency or local government is acting in its capacity as a landowner and contracting for extraction-related activities on state or local government property. [1997 c 186 § 1; 1995 c 223 § 3; 1994 c 232 § 23; 1993 c 518 § 15.]

**Severability—1994 c 232:** See RCW 78.56.900.

**Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31:** See RCW 78.56.901.

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

#### **78.44.091 Reclamation plans—Approval process.**

An applicant shall provide a reclamation plan and copies acceptable to the department prior to obtaining a reclamation permit. The department shall have the sole authority to approve reclamation plans. Reclamation plans or modified reclamation plans submitted to the department after June 30, 1993, shall meet or exceed the minimum reclamation standards set forth in this chapter and by the department in rule. Each applicant shall also supply copies of the proposed plans and final reclamation plan approved by the department to the county, city, or town in which the mine will be located. The department shall solicit comment from local government prior to approving a reclamation plan. The reclamation plan shall include:

(1) A written narrative describing the proposed mining and reclamation scheme with:

(a) A statement of a proposed subsequent use of the land after reclamation that is consistent with the local land use designation. Approval of the reclamation plan shall not vest the proposed subsequent use of the land;

(b) If the permit holder is not the sole landowner, a copy of the conveyance or a written statement that expressly grants or reserves the right to extract minerals by surface mining methods;

(c) A simple and accurate legal description of the permit area and disturbed areas;

(d) The maximum depth of mining;

(e) A reasonably accurate description of the minerals to be mined;

(f) A description of the method of mining;

(g) A description of the sequence of mining that will provide, within limits of normal procedures of the industry, for completion of surface mining and associated disturbance on each portion of the permit area so that reclamation can be initiated at the earliest possible time on each segment of the mine;

(h) A schedule for progressive reclamation of each segment of the mine;

(i) Where mining on flood plains or in river or stream channels is contemplated, a thoroughly documented hydrogeologic evaluation that will outline measures that would protect against or would mitigate avulsion and erosion as determined by the department;

(j) Where mining is contemplated within critical aquifer recharge areas, special protection areas as defined by chapter 90.48 RCW and implementing rules, public water supply watersheds, sole source aquifers, wellhead protection areas, and designated aquifer protection areas as set forth in chapter 36.36 RCW, a thoroughly documented hydrogeologic analysis of the reclamation plan may be required; and

(k) Additional information as required by the department including but not limited to: The positions of reclamation setbacks and screening, conservation of topsoil, interim reclamation, revegetation, postmining erosion control, drainage control, slope stability, disposal of mine wastes, control of fill material, development of wetlands, ponds, lakes, and impoundments, and rehabilitation of topography.

(2) Maps of the surface mine showing:

(a) All applicable data required in the narrative portion of the reclamation plan;

(b) Existing topographic contours;

(c) Contours depicting specifications for surface gradient restoration appropriate to the proposed subsequent use of the land and meeting the minimum reclamation standards;

(d) Locations and names of all roads, railroads, and utility lines on or adjacent to the area;

(e) Locations and types of proposed access roads to be built in conjunction with the surface mining;

(f) Detailed and accurate boundaries of the permit area, screening, reclamation setbacks, and maximum extent of the disturbed area; and

(g) Estimated depth to ground water and the locations of surface water bodies and wetlands both prior to and after mining.

(3) At least two cross sections of the mine including all applicable data required in the narrative and map portions of the reclamation plan.

(4) Evidence that the proposed surface mine has been approved under local zoning and land use regulations.

(5) Written approval of the reclamation plan by the landowner for mines permitted after June 30, 1993.

(6) Other supporting data and documents regarding the surface mine as reasonably required by the department.

If the department refuses to approve a reclamation plan in the form submitted by an applicant or permit holder, it shall notify the applicant or permit holder stating the reasons for its determination and describe such additional requirements to the applicant or permit holder's reclamation plan as are necessary for the approval of the plan by the department. If the department refuses to approve a complete reclamation plan within one hundred twenty days, the miner or permit holder may appeal this determination under the provisions of this chapter.

Only insignificant deviations may occur from the approved reclamation plan without prior written approval by the department for the proposed change. [1997 c 192 § 2; 1993 c 518 § 12.]



**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.151 Reclamation plans—Modification, when required—SEPA.** (1) The permit holder may modify the reclamation plan at any time during the term of the permit provided that the modified reclamation plan meets the protections, mitigations, and reclamation goals of RCW 78.44.091, 78.44.131, and 78.44.141.

(2) The department may require a permit holder to modify the reclamation plan if the department determines:

(a) That the previously approved reclamation plan has not been modified during the past ten years; or

(b) That the permit holder has violated or is not substantially following the previously approved reclamation plan.

(3) Modified reclamation plans shall be reviewed by the department as lead agency under SEPA. Such SEPA analyses shall consider only those impacts relating directly to the proposed modifications. Copies of proposed and approved modifications shall be sent to the appropriate county, city, or town. [1997 c 192 § 3; 1993 c 518 § 23.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.310 Reclamation consulting—No cost service.** The department shall establish a no-cost consulting service within the department to assist miners, permit holders, local government, and the public in technical matters related to mine regulation, mine operations, and reclamation. The department shall prepare concise, printed information for the public explaining surface mining activities, timelines for permits and reviews, laws, and the role of governmental agencies involved in surface mining, including how to contact all regulators. The department shall not be held liable for any negligent advice. [1997 c 184 § 1; 1993 c 518 § 38.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

## Chapter 78.56

### METALS MINING AND MILLING OPERATIONS

#### Sections

78.56.080 Metals mining account—Estimate of costs by department of ecology and department of natural resources—Fee on operations to be established by department of ecology.

**78.56.080 Metals mining account—Estimate of costs by department of ecology and department of natural resources—Fee on operations to be established by department of ecology.** (1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)(a) As part of its normal budget development process and in consultation with the metals mining industry, the department of ecology shall estimate the costs required for the department to meet its obligations for the additional

inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.

(3) Based on the cost estimates generated by the department of ecology and the department of natural resources, the department of ecology shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the agency responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department of ecology may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet agencies' inspection responsibilities.

(4) The department of ecology shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account. [1997 c 170 § 1; 1994 c 232 § 8.]

**Effective date—1997 c 170:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 170 § 2.]

## Title 79

### PUBLIC LANDS

#### Chapters

**79.01 Public lands act.**

**79.24 Capitol building lands.**

**79.71 Washington natural resources conservation areas.**

#### Chapter 79.01

### PUBLIC LANDS ACT

#### Sections

79.01.132 Timber and valuable materials sold separately—Lump sum sales or scale sales—Time limit on removal—Reversion—Extensions, payment and interest—Direct sale to applicant without notice, when.

79.01.184 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting—Direct sale to applicant without notice, when.

79.01.744 Reports.

**79.01.132 Timber and valuable materials sold separately—Lump sum sales or scale sales—Time limit on removal—Reversion—Extensions, payment and interest—Direct sale to applicant without notice, when.**

When any timber, fallen timber, stone, gravel, or other valuable material on state lands is sold separate from the land, it may be sold as a lump sum sale or as a scale sale. Lump sum sales under five thousand dollars appraised value shall be paid for in cash. The initial deposits required in RCW 79.01.204, not to exceed twenty-five percent of the actual or projected purchase price, but in the case of lump sum sales over five thousand dollars not less than five thousand dollars, shall be made on the day of the sale, and in the case of those sales appraised below the amount specified in RCW 79.01.200, the department of natural resources may require full cash payment on the day of sale. The purchaser shall notify the department of natural resources before any timber is cut and before removal or processing of any valuable materials on the sale area, at which time the department of natural resources may require, in the amount determined by the department, advance payment for the removal, processing, and/or cutting of timber or other valuable materials, or bank letters of credit, payment bonds, or assignments of savings accounts acceptable to the department as adequate security. The amount of such advance payments and/or security shall at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for. The initial deposit shall be maintained until all contract obligations of the purchaser are satisfied: PROVIDED HOWEVER, That all or a portion of said initial deposit may be applied as the final payment for said materials in the event the department of natural resources determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

In all cases where timber, fallen timber, stone, gravel, or other valuable material is sold separate from the land, the same shall revert to the state if not removed from the land within the period specified in the sale contract. Said specified period shall not exceed five years from the date of the purchase thereof: PROVIDED, That the specified periods in the sale contract for stone, sand, fill material, or building stone shall not exceed twenty years: PROVIDED FURTHER, That in all cases where, in the judgment of the department of natural resources, the purchaser is acting in good faith and endeavoring to remove such materials, the department of natural resources may extend the time for the removal thereof for any period not exceeding twenty years from the date of purchase for the stone, sand, fill material or building stone or for a total of ten years beyond the normal termination date specified in the original sale contract for all other material, upon payment to the state of a sum to be fixed by the department of natural resources, based on the estimated loss of income per acre to the state resulting from the granting of the extension but in no event less than fifty dollars per extension, plus interest on the unpaid portion of the contract. The interest rate shall be fixed, from time to time, by rule adopted by the board of natural resources and shall not be less than six percent per annum. The applicable rate of interest as fixed at the date of sale and the maximum extension payment shall be set forth in the contract. The method for calculating the unpaid portion of the contract upon which such interest shall be paid by the purchaser shall be set forth in the contract. The department of natural resources shall pay into the state treasury all sums received for such extension and the same shall be credited to the fund

to which was credited the original purchase price of the material so sold. However, a direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board of natural resources shall, by resolution, establish the value amount of a direct sale not to exceed twenty thousand dollars in appraised sale value, and establish procedures to assure that competitive market prices and accountability will be guaranteed.

The provisions of this section apply unless otherwise provided by statute.

The board of natural resources shall establish procedures to protect against cedar theft and to ensure adequate notice is given for persons interested in purchasing cedar. [1997 c 116 § 1; 1989 c 148 § 1; 1988 c 136 § 2; 1983 c 2 § 16. Prior: 1982 c 222 § 11; 1982 c 27 § 3; 1975 1st ex.s. c 52 § 1; 1971 ex.s. c 123 § 1; 1969 ex.s. c 14 § 2; 1961 c 73 § 1; 1959 c 257 § 13; 1927 c 255 § 33; RRS § 7797-33; prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.12.120.]

**Severability—1983 c 2:** See note following RCW 18.71.030.

**Severability—1982 c 222:** "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." [1982 c 222 § 17.]

**79.01.184 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting—Direct sale to applicant without notice, when.** When the department of natural resources shall have decided to sell any state lands or valuable materials thereon, or with the consent of the board of regents of the University of Washington, or by legislative directive, shall have decided to sell any lot, block, tract, or tracts of university lands, or the timber, fallen timber, stone, gravel, or other valuable material thereon it shall be the duty of the department to forthwith fix the date, place, and time of sale, and no sale shall be had on any day which is a legal holiday.

The department shall give notice of the sale by advertisement published not less than two times during a four week period prior to the time of sale in at least one newspaper of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold, or the material upon which is to be sold is situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering such sale and in the office of the county auditor of such county, which notice shall specify the place and time of sale, the appraised value thereof, and describe with particularity each parcel of land to be sold, or from which valuable materials are to be sold, and in case of material sales the estimated volume thereof, and specify that the terms of sale will be posted in the region headquarters and the department's Olympia office. However, a direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board of natural resources shall, by resolution, establish the value amount of a direct sale not to exceed twenty thousand dollars in appraised sale value, and establish procedures to assure that competitive market prices and accountability will be guaranteed. [1997 c 116 § 2; 1989 c 148 § 2; 1988 c 136

§ 3; 1983 c 2 § 17. Prior: 1982 1st ex.s. c 21 § 156; 1982 c 27 § 1; 1971 ex.s. c 123 § 2; 1969 ex.s. c 14 § 3; 1959 c 257 § 18; 1927 c 255 § 46; RRS § 7797-46; prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.12.300.]

**Effective date—1983 c 2 § 17:** "Section 17 of this act shall take effect on July 1, 1983." [1983 c 2 § 18.] This applies to the 1983 c 2 amendments to RCW 79.01.184.

**Severability—1983 c 2:** See note following RCW 18.71.030.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.96.901 through 79.96.905.

*County auditor, transfer of duties:* RCW 79.08.170.

*School and granted lands, manner and terms of sale:* State Constitution Art. 16 § 2.

**79.01.744 Reports.** (1) It shall be the duty of the commissioner of public lands to report, and recommend, to each session of the legislature, any changes in the law relating to the methods of handling the public lands of the state that he may deem advisable.

(2) The commissioner of public lands shall provide a comprehensive biennial report to reflect the previous fiscal period. The report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, intergovernmental agreements, the adopted sustainable harvest compared to the sales program, and outlines of ongoing litigation, recent court decisions and orders on major issues with the potential for state liability. The report shall describe the status of the resources managed and the recreational and commercial utilization. The report shall be given to the chairs of the house and senate committees on ways and means and the house and senate committees on natural resources, including one copy to the staff of each of the committees, and shall be made available to the public.

(3) The commissioner of public lands shall provide annual reports to the respective trust beneficiaries, including each county. The report shall include, but not be limited to, the following: Acres sold, acres harvested, volume from those acres, acres planted, number of stems per acre, acres precommercially thinned, acres commercially thinned, acres partially cut, acres clear cut, age of final rotation for acres clear cut, and the total number of acres off base for harvest and an explanation of why those acres are off base for harvest. [1997 c 448 § 3; 1987 c 505 § 76; 1985 c 93 § 3; 1927 c 255 § 196; RRS § 7797-196. Prior: 1907 c 114 § 1; RRS § 7801. Formerly RCW 43.12.150.]

## Chapter 79.24

### CAPITOL BUILDING LANDS

#### Sections

- |           |   |
|-----------|---|
| 79.24.580 | Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account.   |
| 79.24.658 | Payment of principal and interest—State building and parking bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale—Nondebt-limit revenue bond retirement account. |

**79.24.580 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement account.** After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.92.110(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to such lands; and for volunteer cooperative fish and game projects. During the fiscal biennium ending June 30, 1999, the funds may be appropriated for boating safety, shellfish management, enforcement, and enhancement and for developing and implementing plans for population monitoring and restoration of native wild salmon stock. [1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9.]

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Finding—1994 c 219:** See note following RCW 43.88.030.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.165.070.

**Effective date—1987 c 350:** "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Severability—Effective date—1984 c 221:** See RCW 79.90.901 and 79.90.902.

**79.24.658 Payment of principal and interest—State building and parking bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale—Nondebt-limit revenue bond retirement account.** For the purpose of paying the principal and interest of the bonds as the bonds become due, or as the bonds become callable at the option of the capitol committee, there is created a fund to be denominated the "state building and parking bond redemption fund". While any of the bonds remain outstanding and unpaid, it shall be the duty of the capitol committee on or before June 30th of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the next fiscal year, and certify the amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during that fiscal year and at least fifteen days prior to each interest and principal payment date deposit into the state building and parking bond redemption fund all receipts from any parking facilities and to the extent necessary from receipts from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress until the amount certified to the treasurer by the capitol committee has accrued to the state building and parking bond redemption fund. Nothing in RCW 79.24.650 through 79.24.668 shall prohibit the use

of such receipts from leases and contracts of sale for any other lawfully authorized purpose when not required for the redemption and payment of interest and meeting the covenant requirements of the bonds authorized herein.

In addition to certifying and providing for the annual amounts required to pay the principal and interest of the bonds, the capitol committee may, under such terms and conditions and at such times and in such amounts as may be found necessary to insure the sale of the bonds, provide for additional payments into the state building and parking bond redemption fund to be held as a reserve to secure the payment of the principal and interest of such bonds.

The owner and holder of any of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the general fund—state building construction account.

If a nondebt-limit revenue bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the nondebt-limit revenue bond retirement account shall be used for the purposes of this chapter in lieu of the state building and parking bond redemption fund. [1997 c 456 § 28; 1969 ex.s. c 272 § 5.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

Chapter 79.71

WASHINGTON NATURAL RESOURCES CONSERVATION AREAS

Sections

79.71.120 Elk river natural resources conservation area—Transfer of management—Hunting opportunities.

79.71.120 Elk river natural resources conservation area—Transfer of management—Hunting opportunities.

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes. [1997 c 371 § 1.]

Title 80

PUBLIC UTILITIES

Chapters

80.04 Regulations—General.

80.08 Securities.

80.36 Telecommunications.

Chapter 80.04

REGULATIONS—GENERAL

Sections

80.04.130 Suspension of tariff change—Mandatory measured telecommunications service—Washington telephone assistance program service—Effect of abandonment of electrical generation facility on which tax exemption for pollution control equipment is claimed.

80.04.130 Suspension of tariff change—Mandatory measured telecommunications service—Washington telephone assistance program service—Effect of abandonment of electrical generation facility on which tax exemption for pollution control equipment is claimed. (1)

Whenever any public service company shall file with the commission any schedule, classification, rule or regulation, the effect of which is to change any rate, charge, rental or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the operation of such rate, charge, rental or toll for a period not exceeding ten months from the time the same would otherwise go into effect, and after a full hearing the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective. The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company. The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

For the purposes of this section, tariffs for the following telecommunications services, that temporarily waive or reduce charges for existing or new subscribers for a period not to exceed sixty days in order to promote the use of the services shall be considered tariffs that decrease rates, charges, rentals, or tolls:

- (a) Custom calling service;
(b) Second access lines; or
(c) Other services the commission specifies by rule.

The commission may suspend any promotional tariff other than those listed in (a) through (c) of this subsection.

The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(2) At any hearing involving any change in any schedule, classification, rule or regulation the effect of which is to increase any rate, charge, rental or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(3) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing or approve, prior to June 1, 1998, a tariff filed by a telecommunications company which imposes mandatory local measured service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(4) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service.

(5) If a utility claims a sales or use tax exemption on the pollution control equipment for an electrical generation facility and abandons the generation facility before the pollution control equipment is fully depreciated, any tariff filing for a rate increase to recover abandonment costs for the pollution control equipment shall be considered unjust and unreasonable for the purposes of this section. [1997 c 368 § 14; 1993 c 311 § 1; 1992 c 68 § 1; 1990 c 170 § 1; 1989 c 101 § 13. Prior: 1987 c 333 § 1; 1987 c 229 § 2; prior: 1985 c 450 § 12; 1985 c 206 § 1; 1985 c 161 § 2; 1984 c 3 § 2; 1961 c 14 § 80.04.130; prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**Effective date—1993 c 311:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 311 § 2.]

**Effective date—1987 c 333:** "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 June 1, 1987." [1987 c 333 § 2.]

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

## Chapter 80.08 SECURITIES

|           |  |
|-----------|--|
| Sections  |  |
| 80.08.043 | Issuance of notes—Compliance with RCW 80.08.040—<br>Exceptions.            |
| 80.08.047 | Commission may exempt certain issuances—Order or rule—<br>Public interest. |

**80.08.043 Issuance of notes—Compliance with RCW 80.08.040—Exceptions.** A public service company may issue notes, except demand notes, for proper purposes and not in violation of any provision of this chapter, or any other law, payable at periods of not more than twelve months after the date of issuance, without complying with the requirements of RCW 80.08.040, but no such note may be refunded, in whole or in part, by any issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidence of indebtedness, without compliance with RCW 80.08.040. However, compliance with RCW 80.08.040 is required for the issuance of any note or notes issued as part of a single borrowing transaction of one million dollars or more payable at periods of less than twelve months after the date of issuance by any public service company that is subject to the federal power act unless such note or notes aggregates together with all other then outstanding notes and drafts of a maturity of twelve months or less on which such public service company is primarily or secondarily liable not more than five percent of the par value of other securities of such company then outstanding, computed, in the case of securities having no par value, on the basis of the fair market value as of the date of issuance. [1997 c 162 § 1.]

**80.08.047 Commission may exempt certain issuances—Order or rule—Public interest.** The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed in the order or rule, exempt any security or any class of securities for which a filing is required under this chapter or any electrical or natural gas company or class of electrical or natural gas company from the provisions of this chapter if it finds that the application of this chapter to such security, class of securities, electrical or natural gas company, or class of electrical or natural gas company is not required by the public interest. [1997 c 15 § 1.]

## Chapter 80.36 TELECOMMUNICATIONS

|           |  |
|-----------|--|
| Sections  |  |
| 80.36.110 | Tariff changes—Statutory notice—Exception.   |
| 80.36.375 | Personal wireless services—Siting microcells and/or minor<br>facilities—Definitions. |

**80.36.110 Tariff changes—Statutory notice—Exception.** (1) Except as provided in subsection (2) of this section, unless the commission otherwise orders, no change shall be made in any rate, toll, rental, or charge, that was filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except

after thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100, which notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission for good cause shown may allow changes in rates, charges, tolls, or rentals without requiring the thirty days' notice and publication provided for in this section, by an order specifying the change to be made and the time when it takes effect, and the manner in which the change will be filed and published. When any change is made in any rate, toll, rental, or charge, the effect of which is to increase any rate, toll, rental, or charge then existing, attention shall be directed on the copy filed with the commission to the increase by some character immediately preceding or following the item in the schedule, which character shall be in such a form as the commission may designate.

(2) A telecommunications company may file a tariff that decreases any rate, charge, rental, or toll with ten days' notice to the commission and publication without receiving a special order from the commission when the filing does not contain an offsetting increase to another rate, charge, rental, or toll, and the filing company agrees not to file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year. [1997 c 166 § 1. Prior: 1989 c 152 § 2; 1989 c 101 § 10; 1985 c 450 § 25; 1961 c 14 § 80.36.110; prior: 1911 c 117 § 37; RRS § 10373.]

**80.36.375 Personal wireless services—Siting microcells and/or minor facilities—Definitions.** (1) If a personal wireless service provider applies to site several microcells and/or minor facilities in a single geographical area:

(a) If one or more of the microcells and/or minor facilities are not exempt from the requirements of RCW 43.21C.030(2)(c), local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents required by chapter 43.21C RCW that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions under chapter 43.21C RCW regarding all the microcells and/or minor facilities in a single administrative proceeding; and

(b) Local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents for land use permits that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions regarding land use permits for all the microcells and/or minor facilities in a single administrative proceeding.

(2) For the purposes of this section:

(a) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common

carrier wireless exchange access services, as defined by federal laws and regulations.

(b) "Microcell" means a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.

(c) "Minor facility" means a wireless communication facility consisting of up to three antennas, each of which is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length; and the associated equipment cabinet that is six feet or less in height and no more than forty-eight square feet in floor area. [1997 c 219 § 2; 1996 c 323 § 3.]

**Findings—1996 c 323:** See note following RCW 43.70.600.

## Title 81

### TRANSPORTATION

#### Chapters

- 81.16** Affiliated interests.
- 81.24** Regulatory fees.
- 81.77** Solid waste collection companies.
- 81.104** High capacity transportation systems.
- 81.108** Low-level radioactive waste sites.

#### Chapter 81.16

##### AFFILIATED INTERESTS

#### Sections

- 81.16.075 Application of chapter—Solid waste collection companies.

**81.16.075 Application of chapter—Solid waste collection companies.** This chapter does not apply to a determination of the base for collection rates for solid waste collection companies meeting the requirements under RCW 81.77.160(3). [1997 c 434 § 2.]

#### Chapter 81.24

##### REGULATORY FEES

#### Sections

- 81.24.020 Fees of auto transportation companies—Statement filing.

**81.24.020 Fees of auto transportation companies—Statement filing.** By May 1st of each year, every auto transportation company must file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding year and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue. However, the fee paid shall in no case be less than two dollars and fifty cents.

The percentage rate of gross operating revenue to be paid in any period may be decreased by the commission by general order entered before the fifteenth day of the month preceding the month in which the fee is due. [1997 c 215

§ 1; 1961 c 14 § 81.24.020. Prior: 1955 c 125 § 5; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

### Chapter 81.77

#### SOLID WASTE COLLECTION COMPANIES

(Formerly: Garbage and refuse collection companies)

##### Sections

- 81.77.0201 Jurisdiction of commission upon discontinuation of jurisdiction by municipality.  
81.77.160 Pass-through rates—Rules.

**81.77.0201 Jurisdiction of commission upon discontinuation of jurisdiction by municipality.** A city, town, or combined city-county may at any time reverse its decision to exercise its authority under RCW 81.77.020. In such an event, the commission shall issue a certificate to the last holder of a valid commission certificate of public convenience and necessity, or its successors or assigns, for the area reverting to commission jurisdiction. If there was no certificate existing for the area, or the previous holder was compensated for its certificate property right, the commission shall consider applications for authority under RCW 81.77.040. [1997 c 171 § 4.]

**Severability—1997 c 171:** See note following RCW 35.02.160.

**81.77.160 Pass-through rates—Rules.** (1) The commission, in fixing and altering collection rates charged by every solid waste collection company under this section, shall include in the base for the collection rates:

(a) All charges for the disposal of solid waste at the facility or facilities designated by a local jurisdiction under a local comprehensive solid waste management plan or ordinance; and

(b) All known and measurable costs related to implementation of the approved county or city comprehensive solid waste management plan.

(2) If a solid waste collection company files a tariff to recover the costs specified under this section, and the commission suspends the tariff, the portion of the tariff covering costs specified in this section shall be placed in effect by the commission at the request of the company on an interim basis as of the originally filed effective date, subject to refund, pending the commission's final order. The commission may adopt rules to implement this section.

(3) This section applies to a solid waste collection company that has an affiliated interest under chapter 81.16 RCW with a facility, if the total cost of disposal, including waste transfer, transport, and disposal charges, at the facility is equal to or lower than any other reasonable and currently available option. [1997 c 434 § 1; 1989 c 431 § 30.]

**Section captions not law—1989 c 431:** See RCW 70.95.902.

### Chapter 81.104

#### HIGH CAPACITY TRANSPORTATION SYSTEMS

##### Sections

- 81.104.170 Sales and use tax.

**81.104.170 Sales and use tax.** Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing high capacity transportation service.

The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district. The maximum rate of such tax shall be approved by the voters and shall not exceed one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The maximum rate of such tax that may be imposed shall not exceed nine-tenths of one percent in any county that imposes a tax under RCW 82.14.340, or within a regional transit authority if any county within the authority imposes a tax under RCW 82.14.340. The exemptions in RCW 82.08.820 and 82.12.820 are for the state portion of the sales and use tax and do not extend to the tax authorized in this section. [1997 c 450 § 5; 1992 c 101 § 28; 1990 2nd ex.s. c 1 § 902; 1990 c 43 § 43.]

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

### Chapter 81.108

#### LOW-LEVEL RADIOACTIVE WASTE SITES

##### Sections

- 81.108.050 Maximum rates—Revisions.

**81.108.050 Maximum rates—Revisions.** (1) The maximum disposal rates that a site operator may charge generators shall be determined in accordance with this section. The rates shall include all charges for disposal services at the site.

(2) Initially, the maximum disposal rates shall be the initial rates established pursuant to RCW 81.108.040.

(3) Subsequently, the maximum disposal rates shall be adjusted in January of each year to incorporate inflation and volume adjustments. Such adjustments shall take effect thirty days after filing with the commission unless the commission authorizes that the adjustments take effect earlier, or the commission contests the calculation of the adjustments, in which case the commission may suspend the filing. A site operator shall provide notice to its customers concurrent with the filing.

(4)(a) Subsequently, a site operator may also file for revisions to the maximum disposal rates due to:

(i) Changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross revenue basis against or collected by the site operator, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, leasehold excise taxes, commission regulatory fees, municipal taxes, and a tax or payment in lieu of taxes authorized by the state to



compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county; or

(ii) Factors outside the control of the site operator such as a material change in regulatory requirements regarding the physical operation of the site.

(b) Revisions to the maximum disposal rate shall take effect thirty days after filing with the commission unless the commission suspends the filing or authorizes the proposed adjustments to take effect earlier.

(5) Upon establishment of a contract rate pursuant to RCW 81.108.060 for a disposal fee, the site operator may not collect a disposal fee that is greater than the effective rate. The effective rate shall be in effect so long as such contract rate remains in effect. Adjustments to the maximum disposal rates may be made during the time an effective rate is in place. Contracts for disposal of extraordinary volumes pursuant to RCW 81.108.070 shall not be considered in determining the effective rate.

(6) The site operator may petition the commission for new maximum disposal rates at any time. Upon receipt of such a petition, the commission shall set the matter for hearing and shall issue an order within seven months of the filing of the petition. The petition shall be accompanied by the documents required to accompany the filing for initial rates. The hearing on the petition shall be conducted in accordance with the commission's rules of practice and procedure.

(7) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1997 c 243 § 1; 1991 c 272 § 6.]

## Title 82 EXCISE TAXES

### Chapters

- 82.01 Department of revenue.
- 82.02 General provisions.
- 82.04 Business and occupation tax.
- 82.08 Retail sales tax.
- 82.12 Use tax.
- 82.14 Local retail sales and use taxes.
- 82.16 Public utility tax.
- 82.23B Oil spill response tax.
- 82.24 Tax on cigarettes.
- 82.26 Tax on tobacco products.
- 82.29A Leasehold excise tax.
- 82.32 General administrative provisions.
- 82.36 Motor vehicle fuel tax.
- 82.38 Special fuel tax act.
- 82.42 Aircraft fuel tax.
- 82.44 Motor vehicle excise tax.
- 82.45 Excise tax on real estate sales.
- 82.60 Tax deferrals for investment projects in distressed areas.
- 82.62 Tax credits for eligible business projects.

### Chapter 82.01

#### DEPARTMENT OF REVENUE

##### Sections

- 82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services.
- 82.01.080 Director—Delegation of powers and duties—Responsibility.

**82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services.** The director shall have charge and general supervision of the department of revenue. The director shall appoint an assistant director for administration, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the assistant director, and subject to the provisions of chapter 41.06 RCW may appoint and employ such clerical, technical and other personnel as may be necessary to carry out the powers and duties of the department. The director may also enter into personal service contracts with out-of-state individuals or business entities for the performance of auditing services outside the state of Washington when normal efforts to recruit classified employees are unsuccessful. The director may agree to pay to the department's employees or contractors who reside out of state such amounts in addition to their ordinary rate of compensation as are necessary to defray the extra costs of facilities, living, and other costs reasonably related to the out-of-state services, subject to legislative appropriation for those purposes. The special allowances shall be in such amounts or at such rates as are approved by the office of financial management. This section does not apply to audit functions performed in states contiguous to the state of Washington. [1997 c 156 § 1; 1982 c 128 § 1; 1967 ex.s. c 26 § 4.]

**Effective date—1982 c 128:** "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 March 1, 1982." [1982 c 128 § 2.]

**82.01.080 Director—Delegation of powers and duties—Responsibility.** The director may delegate any power or duty vested in or transferred to the director by law, or executive order, to the assistant director or to any of the director's subordinates; but the director shall be responsible for the official acts of the officers and employees of the department. [1997 c 156 § 2; 1967 ex.s. c 26 § 5.]

### Chapter 82.02

#### GENERAL PROVISIONS

##### Sections

- 82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.
- 82.02.200 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.

**82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—**

**Limitations—Exceptions.** Except only as expressly provided in chapters 67.28 and 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of the refund; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and

drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [1997 c 452 § 21; 1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Severability—1970 ex.s. c 94:** See RCW 82.14.900.

**82.02.200 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.** The director may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under chapter 19.02 RCW. [1997 c 51 § 6.]

**Intent—1997 c 51:** See note following RCW 19.02.300.

## Chapter 82.04

### BUSINESS AND OCCUPATION TAX

#### Sections

|           |  |
|-----------|--|
| 82.04.050 | "Sale at retail," "retail sale."                                       |
| 82.04.055 | "Selected business services." ( <i>Effective until July 1, 1998.</i> ) |
| 82.04.055 | Repealed. ( <i>Effective July 1, 1998.</i> )                           |

- 82.04.065 "Competitive telephone service," "network telephone service," "telephone service," "telephone business."  
 82.04.110 "Manufacturer."  
 82.04.120 "To manufacture."  
 82.04.255 Tax on real estate brokers. *(Effective July 1, 1998.)*  
 82.04.290 Tax on international investment management services or other business or service activities. *(Effective July 1, 1998.)*  
 82.04.293 International investment management services—Definitions. *(Effective July 1, 1998.)*  
 82.04.297 Internet services—Definitions.  
 82.04.312 Exemptions—Water services supplied by small water-sewer districts or systems—Certification by department of health. *(Expires July 1, 2003.)*  
 82.04.317 Exemptions—Motor vehicle sales by manufacturers at wholesale auctions to dealers.  
 82.04.363 Exemptions—Camp or conference center—Items sold or furnished by nonprofit organization. *(Effective October 1, 1997.)*  
 82.04.392 Exemptions—Mortgage brokers' third-party provider services trust accounts.  
 82.04.421 Exemptions—Out-of-state membership sales in discount programs.  
 82.04.435 Decodified.  
 82.04.444 Repealed.  
 82.04.445 Repealed.  
 82.04.4451 Credit against tax due—Maximum credit—Table.  
 82.04.4452 Credit—Research and development spending—Assessment report. *(Effective July 1, 1998, until December 31, 2004.)*

**82.04.050 "Sale at retail," "retail sale."** (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c),

(d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services 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, and 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 enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used

or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income

tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. [1997 c 127 § 1. Prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—1997 c 127:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

**Severability—1996 c 148:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

**Effective date—1996 c 148:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

**Effective date—1996 c 112:** "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

**Intent—1995 1st sp.s. c 12:** "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

**Effective date—1995 1st sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

**Effective date—1995 c 39:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010

**Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90:** See note following RCW 82.12.010.

**Effective dates—1975 1st ex.s. c 291:** "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 institutions, and shall take effect immediately. PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.] Sections not specified took effect July 2, 1975.

**Severability—1975 1st ex.s. c 291:** "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 291 § 45.]

**Effective date—1975 1st ex.s. c 90:** "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 90 § 5.]

**Effective date—1973 1st ex.s. c 145:** "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, 1973." [1973 1st ex.s. c 145 § 2.]

**Effective dates—1971 ex.s. c 299:** "This 1971 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 as follows:

- (1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;
- (2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and
- (3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

**Severability—1971 ex.s. c 299:** "If any phrase, clause, subsection or section of this 1971 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 1971 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." [1971 ex.s. c 299 § 78.]

**Construction—Severability—1969 ex.s. c 255:** See notes following RCW 35.58.272.

**Effective date—1967 ex.s. c 149:** "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, 1967." [1967 ex.s. c 149 § 65.]

**Effective date—1965 ex.s. c 173:** "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 June 1, 1965." [1965 ex.s. c 173 § 33.]

*Credit for retail sales or use taxes paid to other jurisdictions with respect to property used:* RCW 82.12.035.

**82.04.055 "Selected business services." (Effective until July 1, 1998.)** (1) "Selected business services" means:

- (a) Stenographic, secretarial, and clerical services.
- (b) Computer services, including but not limited to computer programming, custom software modification, custom software installation, custom software maintenance, custom software repair, training in the use of custom software, computer systems design, and custom software update services.
- (c) Data processing services, including but not limited to word processing, data entry, data retrieval, data search, information compilation, payroll processing, business

accounts processing, data production, and other computerized data and information storage or manipulation. Data processing services also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.

(d) Information services, including but not limited to electronic data retrieval or research that entails furnishing financial or legal information, data or research, internet service as defined in RCW 82.04.297, general or specialized news, or current information unless such news or current information is furnished to a newspaper publisher or to a radio or television station licensed by the federal communications commission.

(e) Legal, arbitration, and mediation services, including but not limited to paralegal services, legal research services, and court reporting services.

(f) Accounting, auditing, actuarial, bookkeeping, tax preparation, and similar services.

(g) Design services whether or not performed by persons licensed or certified, including but not limited to the following:

(i) Engineering services, including civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing;

(ii) Architectural services, including but not limited to: Structural or landscape design or architecture, interior design, building design, building program management, and space planning.

(h) Business consulting services. Business consulting services are those primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, nonprofit, or public organization, including but not limited to those in the following areas: Administrative management consulting, general management consulting, human resource consulting or training, management engineering consulting, management information systems consulting, manufacturing management consulting, marketing consulting, operations research consulting, personnel management consulting, physical distribution consulting, site location consulting, economic consulting, motel, hotel, and resort consulting, restaurant consulting, government affairs consulting, and lobbying.

(i) Business management services, including but not limited to administrative management, business management, and office management, but not including property management or property leasing, motel, hotel, and resort management, or automobile parking management.

(j) Protective services, including but not limited to detective agency services and private investigating services, armored car services, guard or protective services, lie detection or polygraph services, and security system, burglar, or fire alarm monitoring and maintenance services.

(k) Public relations or advertising services, including but not limited to layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision, but excluding services provided as part of broadcast or print advertising.

(l) Aerial and land surveying, geological consulting, and real estate appraising.

(2) Subsection (1) of this section notwithstanding, the term "selected business services" does not include:

(a) The provision of either permanent or temporary employees.

(b) Services provided by a public benefit nonprofit organization, as defined in RCW 82.04.366, to the state of Washington, its political subdivisions, municipal corporations, or quasi-municipal corporations.

(c) Services related to the identification, investigation, or cleanup arising out of the release or threatened release of hazardous substances when the services are remedial or response actions performed under federal or state law, or when the services are performed to determine if a release of hazardous substances has occurred or is likely to occur.

(d) Services provided to or performed for, on behalf of, or for the benefit of a collective investment fund such as: (i) A mutual fund or other regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, as amended; (ii) an "investment company" as that term is used in section 3(a) of the Investment Company Act of 1940 as well as an entity that would be an investment company under section 3(a) of the Investment Company Act of 1940 except for the section 3(c)(1) or (11) exemptions, or except that it is a foreign investment company organized under laws of a foreign country; (iii) an "employee benefit plan," which includes any plan, trust, commingled employee benefit trusts, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or similar plan maintained by state or local governments, or plans, trusts, or custodial arrangements established to self-insure benefits required by federal, state, or local law; (iv) a fund maintained by a tax exempt organization as defined in section 501(c)(3) or 509(a) of the Internal Revenue Code of 1986, as amended, for operating, quasi-endowment, or endowment purposes; or (v) funds that are established for the benefit of such tax exempt organization such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts.

(e) Research or experimental services eligible for expense treatment under section 174 of the Internal Revenue Code of 1986, as amended.

(f) Financial services provided by a financial institution. The term "financial institution" means a corporation, partnership, or other business organization chartered under Title 30, 31, 32, or 33 RCW, or under the National Bank Act, as amended, the Homeowners Loan Act, as amended, or the Federal Credit Union Act, as amended, or a holding company of any such business organization that is subject to the Bank Holding Company Act, as amended, or the Homeowners Loan Act, as amended, or a subsidiary or affiliate wholly owned or controlled by one or more financial institutions, as well as a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act, as amended. The term "financial services" means those activities authorized by the laws cited in this subsection (2)(f) and includes services such as mortgage servicing, contract collection servicing, finance leasing, and services

provided in a fiduciary capacity to a trust or estate. [1997 c 304 § 3; 1993 sp.s. c 25 § 201.]

**Findings—Severability—Effective date—1997 c 304:** See notes following RCW 35.21.717.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**82.04.055 Repealed. (Effective July 1, 1998.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** RCW 82.04.055 was amended by 1997 c 304 § 3 without reference to its repeal by 1997 c 7 § 5. It will be decodified for publication purposes July 1, 1998, under RCW 1.12.025.

**82.04.065 "Competitive telephone service," "network telephone service," "telephone service," "telephone business."** (1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Network telephone service" means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet service as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(3) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in subsections (1) and (2) of this section.

(4) "Telephone business" means the business of providing network telephone service, as defined in subsection (2) of this section. It includes cooperative or farmer line telephone companies or associations operating an exchange. [1997 c 304 § 5; 1983 2nd ex.s. c 3 § 24.]

**Findings—Severability—Effective date—1997 c 304:** See notes following RCW 35.21.717.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**82.04.110 "Manufacturer."** "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services,

manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances or commodities. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability: PROVIDED, That a person who produces aluminum master alloys is a processor for hire rather than a manufacturer, regardless of the portion of the aluminum provided by that person's customer: PROVIDED FURTHER, That a nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state: PROVIDED FURTHER, That the owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly.

For the purposes of this section, "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3. [1997 c 453 § 1; 1971 ex. s. c 186 § 1; 1961 c 15 § 82.04.110. Prior: 1955 c 389 § 12; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—1997 c 453:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 453 § 2.]

**Effective date—1971 ex. s. c 186:** "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex. s. c 186 § 5.]

**82.04.120 "To manufacture."** "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include the production or fabrication of special made or custom made articles.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; or activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state. [1997 c 384 § 1; 1989 c 302 § 201. Prior: 1989 c 302 § 101; 1987 c 493 § 1; 1982 2nd ex. s. c 9 § 2; 1975 1st ex. s. c 291 § 6; 1965 ex. s. c 173 § 3; 1961 c 15 § 82.04.120; prior: 1959 ex. s. c 3 § 2; 1955 c 389 § 13; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—1997 c 384:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 384 § 3.]

**Finding, purpose—1989 c 302:** "(1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston

county superior court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of \*Part I of this act is to recognize the effect of that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in \*Part II of this act.

(2) The purpose of \*Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the *Washington Water Power* decision." [1989 c 302 § 1.]

**\*Reviser's note:** For "Part" division see 1989 c 302.

**Effective date—1982 2nd ex. s. c 9:** See note following RCW 82.16.010.

**Effective dates—Severability—1975 1st ex. s. c 291:** See notes following RCW 82.04.050.

**82.04.255 Tax on real estate brokers.** (*Effective July 1, 1998.*) Upon every person engaging within the state as a real estate broker; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 1.5 percent.

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salesmen or associate brokers in the same office on a particular transaction: PROVIDED, HOWEVER, That where a real estate commission is divided between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall pay the tax only upon their respective shares of said commission: AND PROVIDED FURTHER, That where the brokerage office has paid the tax as provided herein, salesmen or associate brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction. [1997 c 7 § 1; 1996 c 1 § 1; 1993 sp. s. c 25 § 202; 1985 c 32 § 2; 1983 2nd ex. s. c 3 § 1; 1983 c 9 § 1; 1970 ex. s. c 65 § 3.]

**Savings—1997 c 7:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [1997 c 7 § 6.]

**Effective date—1997 c 7:** "This act takes effect July 1, 1998." [1997 c 7 § 7.]

**Effective date—1996 c 1:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect January 1, 1996." [1996 c 1 § 5.]

**Severability—Effective dates—Part headings, captions not law—1993 sp. s. c 25:** See notes following RCW 82.04.230.

**Construction—1983 2nd ex. s. c 3:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1983 2nd ex. s. c 3 § 65.]

**Severability—1983 2nd ex. s. c 3:** "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." [1983 2nd ex. s. c 3 § 66.]

**Effective dates—1983 2nd ex. s. c 3:** "(1) 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, 1983, except that:

(a) Sections 42 through 50, and 52, 53, 65, and 66 of this act shall take effect June 30, 1983;

(b) Sections 1 through 4 of this act shall take effect July 1, 1983, except as provided in subsection (2) of this section;



(c) Sections 21, 22, and 51 of this act shall take effect January 1, 1984. Section 51 of this act shall be effective for property taxes levied in 1983 and due in 1984, and thereafter; and

(d) Section 63 of this act shall take effect April 1, 1985, and shall be effective in respect to taxable activities occurring on and after April 1, 1985; and

(e) The extension under this act of the retail sales tax to certain sales of telephone service shall apply to telephone service billed on or after July 1, 1983, whether or not such service was rendered before that date.

(f) Sections 61 and 62 of this act shall take effect on the day either of the following events occurs, whichever is earlier:

(i) A temporary or permanent injunction or order becomes effective which prohibits in whole or in part the collection of taxes at the rates specified in section 6, chapter 7, Laws of 1983; or

(ii) A decision of a court in this state invalidating in whole or in part section 6, chapter 7, Laws of 1983, becomes final.

(2) The legislature finds that the amendments contained in sections 1 through 4 of this act constitute an integrated and inseparable entity and if any one or more of those sections does not become law, the remaining sections shall not take effect. If sections 1 through 4 of this act do not become law, the governor shall in that event reduce approved allotments under RCW 43.88.110 for the 1983-85 biennium by four percent." [1983 2nd ex.s. c 3 § 67.]

**Reviser's note:** (1) "Sections 42 through 50 and 52" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.49.010, 88.02.020, 88.02.030, 88.02.050, and 88.02.110 and the enactment of RCW 43.51.400, 82.49.020, 82.49.070, 88.02.070, and 88.02.080. "Section 53" consists of the enactment of a new section which appears as a footnote to RCW 88.02.020, and "sections 65 and 66" consist of the enactment of new sections which appear as footnotes to RCW 82.04.255 above.

(2) "Sections 1 through 4" consist of the 1983 2nd ex.s. c 3 §§ 1-4 amendments to RCW 82.04.255, 82.04.290, 82.04.2904, and 82.04.2901, respectively.

(3) "Sections 21, 22, and 51" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.48.010, 82.48.030, and 84.36.080, respectively.

(4) "Section 63" consists of the 1983 2nd ex.s. c 3 amendment to RCW 82.32.045.

(5) "Sections 61 and 62" consist of the 1983 2nd ex.s. c 3 §§ 61 and 62 amendments to RCW 82.04.2901 and 82.08.020, respectively. For the effective date of sections 61 and 62, see *Bond v. Burrows*, 103 Wn.2d 153 (1984).

**Construction—1983 c 9:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended in this act, nor any rule, regulation, or order adopted nor any proceeding instituted under those sections." [1983 c 9 § 6.]

**Severability—1983 c 9:** "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." [1983 c 9 § 7.]

**Effective date—1983 c 9:** "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 March 1, 1983. The additional taxes and tax rate changes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1983 c 9 § 8.]

**Effective date—Severability—1970 ex.s. c 65:** See notes following RCW 82.03.050.

**82.04.290 Tax on international investment management services or other business or service activities. (Effective July 1, 1998.)** (1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280, and subsection (1) of

this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section. [1997 c 7 § 2; 1996 c 1 § 2; 1995 c 229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290. Prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Effective date—1996 c 1:** See note following RCW 82.04.255.

**Effective date—1995 c 229:** See note following RCW 82.04.293.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Construction—Severability—Effective date—1983 c 9:** See notes following RCW 82.04.255.

**82.04.293 International investment management services—Definitions. (Effective July 1, 1998.)** For purposes of RCW 82.04.290:

(1) A person is engaged in the business of providing international investment management services, if:

(a) Such person is engaged primarily in the business of providing investment management services; and

(b) At least ten percent of the gross income of such person is derived from providing investment management services to any of the following: (i) Persons or collective investment funds residing outside the United States; or (ii) persons or collective investment funds with at least ten percent of their investments located outside the United States.

(2) "Investment management services" means investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions, or related investment services.

(3) "Collective investment fund" includes:

(a) A mutual fund or other regulated investment company, as defined in section 851(a) of the internal revenue code of 1986, as amended;

(b) An "investment company," as that term is used in section 3(a) of the investment company act of 1940, as well as any entity that would be an investment company for this purpose but for the exemptions contained in section 3(c)(1) or (11);

(c) An "employee benefit plan," which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the internal revenue code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;

(d) A fund maintained by a tax-exempt organization, as defined in section 501(c)(3) of the internal revenue code of 1986, as amended, for operating, quasi-endowment, or endowment purposes;

(e) Funds that are established for the benefit of such tax-exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or

(f) Collective investment funds similar to those described in (a) through (e) of this subsection created under the laws of a foreign jurisdiction.

(4) Investments are located outside the United States if the underlying assets in which the investment constitutes a beneficial interest reside or are created, issued or held outside the United States. [1997 c 7 § 3; 1995 c 229 § 1.]

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Effective date—1995 c 229:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 229 § 4.]

**82.04.297 Internet services—Definitions.** (1) The provision of internet services is a selected business service activity and subject to tax under \*RCW 82.04.290(1), but if \*\*RCW 82.04.055 is repealed then the provision of internet services is taxable under the general service business and occupation tax classification of RCW 82.04.290.

(2) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

(3) "Internet service" means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical subnetwork called the world wide web. [1997 c 304 § 4.]

**Reviser's note:** \*(1) RCW 82.04.290 was amended by 1997 c 7 § 2, effective July 1, 1998, deleting subsection (1).

\*\* (2) RCW 82.04.055 was repealed by 1997 c 7 § 5, effective July 1, 1998.

**Findings—Severability—Effective date—1997 c 304:** See notes following RCW 35.21.717.

**82.04.312 Exemptions—Water services supplied by small water-sewer districts or systems—Certification by department of health.** (*Expires July 1, 2003.*) (1) This chapter does not apply to amounts received for water

services supplied by a water-sewer district established under Title 57 RCW that has been certified by the department of health as:

(a) Having less than one thousand five hundred connections; and

(b) Charging residential water rates that exceed one hundred twenty-five percent of the state-wide average water rate.

(2) This chapter does not apply to amounts received for water services supplied by a water system that has been certified by the department of health as:

(a) Being operated or owned by a qualified satellite management agency under RCW 70.116.134;

(b) Having less than two hundred connections; and

(c) Charging residential water rates that exceed one hundred twenty-five percent of the state-wide average water rate.

(3) To receive an exemption under this section, the water system shall supply to the department of health proof that an amount equal to at least ninety percent of the value of the exemption shall be expended to repair, equip, maintain, and upgrade the water system.

(4) The department of health shall certify to the department of revenue the eligibility of water districts and water systems under this section. In order to determine eligibility, the department of health may use rate information provided in surveys and reports produced by the association of Washington cities, an association of elected officials, or other municipal association to estimate a state-wide average residential water rate. The department of health shall update the estimated state-wide average residential water rate by July 1 of each year that this section remains in effect.

(5) This section expires July 1, 2003. [1997 c 407 § 2.]

**Findings—1997 c 407:** "The legislature finds that encouraging water districts to better manage state water resources and encouraging satellite management of failing water systems is in the best interests of the people of Washington state. Continual updates of water quantity and quality, as mandated by federal and state agencies, have revealed that degradation of water quality exists in small water systems throughout the state and that satellite management and consolidation of small systems under a centralized management structure can best utilize existing resources available to assure safe, clean drinking water. The legislature further finds that costs involved in upgrading these small systems can be extremely burdensome to water customers and public water purveyors. With diminishing resources available to these small systems, the legislature finds that granting business and occupation and excise tax relief, under certain conditions, will assist smaller water districts to meet state and federal standards." [1997 c 407 § 1.]

**82.04.317 Exemptions—Motor vehicle sales by manufacturers at wholesale auctions to dealers.** This chapter does not apply to amounts received by a motor vehicle manufacturer, as defined in RCW 19.118.021, or by a financing subsidiary of such motor vehicle manufacturer which subsidiary is at least fifty percent owned by the manufacturer, from the sale of motor vehicles at wholesale auctions to dealers licensed under chapter 46.70 RCW or dealers licensed by any other state. [1997 c 4 § 1.]

**Effective date—1997 c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 1997]." [1997 c 4 § 2.]

**82.04.363 Exemptions—Camp or conference center—Items sold or furnished by nonprofit organization.** (*Effective October 1, 1997.*) This chapter does not apply to amounts received by a nonprofit organization from the sale or furnishing of the following items at a camp or conference center conducted on property exempt from property tax under RCW 84.36.030 (1), (2), or (3):

(1) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(2) Food and meals;

(3) Books, tapes, and other products that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large. [1997 c 388 § 1.]

**Effective date—1997 c 388:** "This act takes effect October 1, 1997." [1997 c 388 § 3.]

**82.04.392 Exemptions—Mortgage brokers' third-party provider services trust accounts.** This chapter shall not apply to amounts received from trust accounts that are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions. [1997 c 106 § 21.]

**Severability—1997 c 106:** See note following RCW 19.146.010.

**82.04.421 Exemptions—Out-of-state membership sales in discount programs.** (1) For the purposes of this section, "qualifying discount program" means a membership program, club, or plan that entitles the member to discounts on services or products sold by others. The term does not include any discount program which in part or in total entitles the member to discounts on services or products sold by the seller of the membership or an affiliate of the seller of the membership. "Affiliate," for the purposes of this section, means any person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the seller.

(2) Persons selling memberships in a qualifying discount program are not subject to tax under this chapter on that portion of the membership sales where the seller delivers the membership materials to the purchaser who receives them at a point outside this state. [1997 c 408 § 1.]

**Effective date—1997 c 408:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 408 § 2.]

**82.04.435 Decodified.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.04.444 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.04.445 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.04.4451 Credit against tax due—Maximum credit—Table.** (1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. The maximum credit for a taxpayer for a reporting period is

thirty-five dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection shall be used by all taxpayers in taking the credit provided in this section. [1997 c 238 § 2; 1994 sp.s. c 2 § 1.]

**Findings—Intent—1997 c 238:** "The legislature finds that many businesses have difficulty applying the small business credit under RCW 82.04.4451. Further, the legislature appreciates the valuable time and resources small businesses expend on calculating the amount of credit based upon a statutory formula. For the purpose of tax simplification, it is the intent of this act to direct the department of revenue to create a schedule, in standard increments, to replace required calculations for the small business credit. Each taxpayer can make reference to the taxpayer's tax range on the schedule and find the amount of the taxpayer's small business credit. Further, no taxpayer will owe a greater amount of tax nor will any taxpayer be responsible for a greater amount of taxes otherwise due." [1997 c 238 § 1.]

**Effective date—1994 sp.s. c 2:** "This act shall take effect on July 1, 1994." [1994 sp.s. c 2 § 5.]

**Application to reporting periods—1994 sp.s. c 2 § 1:** "Section 1 of this act applies to the entire period of reporting periods ending after July 1, 1994." [1994 sp.s. c 2 § 6.]

**82.04.4452 Credit—Research and development spending—Assessment report.** (*Effective July 1, 1998, until December 31, 2004.*) (1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit is equal to the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development, multiplied by the rate provided in RCW 82.04.260(6) in the case of a nonprofit corporation or nonprofit association engaging within this state in research and development, and the rate provided in RCW 82.04.290(2) for every other person.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, shall be taken against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The

credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year shall not exceed the lesser of two million dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) Any person taking the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the calendar year in which the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year shall be liable for payment of the additional taxes represented by the amount of credit taken together with interest, but not penalties. Interest shall be due at the rate provided for delinquent excise taxes retroactively to the date the credit was taken until the taxes are paid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be taken by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

(6) Any person claiming the credit, and any person assigning a credit as provided in subsection (3) of this section, shall file an affidavit form prescribed by the department which shall include the amount of the credit claimed, an estimate of the anticipated qualified research and development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(7) A person claiming the credit shall agree to supply the department with information necessary to measure the results of the tax credit program for qualified research and development expenditures.

(8) The department shall use the information required under subsection (7) of this section to perform three assessments on the tax credit program authorized under this section. The assessments will take place in 1997, 2000, and 2003. The department shall prepare reports on each assessment and deliver their reports by September 1, 1997, September 1, 2000, and September 1, 2003. The assessments shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(9) For the purpose of this section:

(a) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(b) "Qualified research and development" shall have the same meaning as in RCW 82.63.010.

(c) "Research and development spending" means qualified research and development expenditures plus eighty

percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(d) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(10) This section shall expire December 31, 2004. [1997 c 7 § 4; 1994 sp.s. c 5 § 2.]

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Findings—Effective date—1994 sp.s. c 5:** See RCW 82.63.005 and 82.63.900.

## Chapter 82.08 RETAIL SALES TAX

### Sections

- 82.08.02566 Exemptions—Sales of tangible personal property incorporated in prototype for parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.
- 82.08.02745 Exemptions—Charges for labor and services or sales of tangible personal property related to agricultural employee housing—Exemption certificate—Rules.
- 82.08.0283 Exemptions—Sales of insulin, prosthetic devices, orthotic devices, hearing instruments, medicines used in treatment by a naturopath, ostomic items, and medically prescribed oxygen—Repair, cleaning, altering, improving hearing instruments. (*Effective October 1, 1998.*)
- 82.08.02875 Exemptions—Vehicle parking charges subject to tax at stadium and exhibition center.
- 82.08.02915 Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis. (*Expires July 1, 1999.*)
- 82.08.0315 Exemptions—Rentals or sales related to motion picture or video productions—Exceptions—Certificate.
- 82.08.065 Repealed.
- 82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection. (*Effective July 1, 1998.*)
- 82.08.170 Apportionment and distribution from liquor excise tax fund.
- 82.08.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Exemption certificate—Payments on cessation of operation.
- 82.08.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.
- 82.08.812 Exemptions—Coal used at coal-fired thermal electric generation facility—Forfeiture upon use of nonlocal coal sources—Reinstatement.
- 82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions.
- 82.08.830 Exemptions—Sales at camp or conference center by non-profit organization. (*Effective October 1, 1997.*)

**82.08.02566 Exemptions—Sales of tangible personal property incorporated in prototype for parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.** (1) The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or to sales of tangible personal property that at one time is incorporated into the prototype

but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply to sales to any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.12.02566 shall not exceed one hundred thousand dollars for any person during any calendar year. [1997 c 302 § 1; 1996 c 247 § 4.]

**Effective date—1997 c 302:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 302 § 3.]

**Findings—Intent—1996 c 247:** "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to include machinery and equipment used for research and development with potential manufacturing applications." [1996 c 247 § 1.]

**82.08.02745 Exemptions—Charges for labor and services or sales of tangible personal property related to agricultural employee housing—Exemption certificate—Rules.**

(1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures, but only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time agricultural employee housing that is not located on agricultural land ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due shall be immediately due and payable with interest, but not

penalties, from the date the housing ceases to be used as agricultural employee housing until the date of payment.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) For purposes of this section and RCW 82.12.02685:

(a) "Agricultural employee" or "employee" has the same meaning as given in RCW 19.30.010;

(b) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010; and

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.54.110. "Agricultural employee housing" does not include housing regularly provided on a commercial basis to the general public. "Agricultural employee housing" does not include housing provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided. [1997 c 438 § 1; 1996 c 117 § 1.]

**Effective date—1997 c 438:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 438 § 3.]

**Effective date—1996 c 117:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1996]." [1996 c 117 § 3.]

**82.08.0283 Exemptions—Sales of insulin, prosthetic devices, orthotic devices, hearing instruments, medicines used in treatment by a naturopath, ostomic items, and medically prescribed oxygen—Repair, cleaning, altering, improving hearing instruments. (Effective October 1, 1998.)** The tax levied by RCW 82.08.020 shall not apply to sales of insulin; prosthetic devices; orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of hearing instruments exempted under this section. [1997 c 224 § 1;

1996 c 162 § 1; 1991 c 250 § 2; 1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

**Effective date—1997 c 224:** "This act takes effect October 1, 1998." [1997 c 224 § 3.]

**Effective date—1996 c 162:** "This act shall take effect July 1, 1996." [1996 c 162 § 3.]

**Finding—Intent—1991 c 250:** "(1) The legislature finds:

(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxygen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax." [1991 c 250 § 1.]

**Effective date—1986 c 255:** "This act shall take effect July 1, 1986." [1986 c 255 § 3.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02875 Exemptions—Vehicle parking charges subject to tax at stadium and exhibition center.** The tax levied by RCW 82.08.020 does not apply to vehicle parking charges that are subject to tax under RCW 36.38.040. [1997 c 220 § 203 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**82.08.02915 Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis. (Expires July 1, 1999.)** The tax levied by RCW 82.08.020 shall not apply to sales to health or social welfare organizations, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. This section shall expire July 1, 1999. [1997 c 386 § 56; 1995 c 346 § 1.]

**Effective date—1997 c 386 §§ 56, 57:** "Sections 56 and 57 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997." [1997 c 386 § 71.]

**Effective date—1995 c 346:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 13, 1995]." [1995 c 346 § 4.]

**82.08.0315 Exemptions—Rentals or sales related to motion picture or video productions—Exceptions—Certificate.** (1) As used in this section:

(a) "Production equipment" means the following when used in motion picture or video production or post-production: Grip and lighting equipment, cameras, camera mounts including tripods, jib arms, steadicams, and other camera mounts, cranes, dollies, generators, helicopter mounts, helicopters rented for motion picture or video production, walkie talkies, vans, trucks, and other vehicles specifically equipped for motion picture or video production or used solely for production activities, wardrobe and

makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, telepromoters, sound recording equipment, and editorial equipment.

(b) "Production services" means motion picture and video processing, printing, editing, duplicating, animation, graphics, special effects, negative cutting, conversions to other formats or media, stock footage, sound mixing, rerecording, sound sweetening, sound looping, sound effects, and automatic dialog replacement.

(c) "Motion picture or video production business" means a person engaged in the production of motion pictures and video tapes for exhibition, sale, or for broadcast by a person other than the person producing the motion picture or video tape.

(2) The tax levied by RCW 82.08.020 does not apply to the rental of production equipment, or the sale of production services, to a motion picture or video production business.

(3) The exemption provided for in this section shall not apply to rental of production equipment, or the sale of production services, to a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050.

(4) In order to claim an exemption under this section, the purchaser must provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files. [1997 c 61 § 1; 1995 2nd sp.s. c 5 § 1.]

**Effective date—1995 2nd sp.s. c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 5 § 3.]

**82.08.065 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection. (Effective July 1, 1998.)** (1) There is levied and shall be collected a tax upon each retail sale of spirits, or strong beer in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to full service restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits, or strong beer in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to full service restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to full service restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per

liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to full service restaurant licensees. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to full service restaurant licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to full service restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to full service restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(7) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits or strong beer in the original package.

(8) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(9) As used in this section, the terms, "spirits," "strong beer," and "package" shall have the meaning ascribed to them in chapter 66.04 RCW. [1997 c 321 § 55; 1994 sp.s. c 7 § 903 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 310; 1989 c 271 § 503; 1983 2nd ex.s. c 3 § 12; 1982 1st ex.s. c 35 § 3; 1981 1st ex.s. c 5 § 25; 1973 1st ex.s. c 204 § 1; 1971 ex.s. c 299 § 9; 1969 ex.s. c 21 § 11; 1965 ex.s. c 173 § 16; 1965 c 42 § 1; 1961 ex.s. c 24 § 2; 1961 c 15 § 82.08.150. Prior: 1959 ex.s. c 5 § 9; 1957 c 279 § 4; 1955 c 396 § 1; 1953 c 91 § 5; 1951 2nd ex.s. c 28 § 5.]

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1989 c 271:** See note following RCW 66.28.200.

**Severability—1989 c 271:** See note following RCW 9.94A.310.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1973 1st ex.s. c 204:** "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 the first day of July, 1973." [1973 1st ex.s. c 204 § 4.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**Effective date—1969 ex.s. c 21:** See note following RCW 64.04.010.

**82.08.170 Apportionment and distribution from liquor excise tax fund.** (1) During the months of January, April, July and October of each year, the state treasurer shall make the apportionment and distribution of all moneys in the liquor excise tax fund to the counties, cities and towns in the following proportions: Twenty percent of the moneys in said liquor excise tax fund shall be divided among and distributed to the counties of the state in accordance with the provisions of RCW 66.08.200; eighty percent of the moneys in said liquor excise tax fund shall be divided among and distributed to the cities and towns of the state in accordance with the provisions of RCW 66.08.210.

(2) Each fiscal quarter and prior to making the twenty percent distribution to counties under subsection (1) of this section, the treasurer shall transfer to the county research services account under RCW 43.110.050 sufficient moneys that, when combined with any cash balance in the account, will fund the allotments from any legislative appropriations from the county research services account. [1997 c 437 § 4; 1983 c 3 § 215; 1961 c 15 § 82.08.170. Prior: 1955 c 396 § 3.]

**Effective date—1997 c 437:** See note following RCW 43.110.010.

**82.08.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Exemption certificate—Payments on cessation of operation.** (1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of tangible personal property to a light and power business, as defined in RCW 82.16.010, for construction or installation of air pollution control facilities at a thermal electric generation facility; or



(b) Sales of, cost of, or charges made for labor and services performed in respect to the construction or installation of air pollution control facilities.

(3) The exemption provided under this section applies only to sales, costs, or charges:

(a) Incurred for air pollution control facilities constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975;

(b) If the air pollution control facilities are constructed or installed to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW; and

(c) For which the purchaser provides the seller with an exemption certificate, signed by the purchaser or purchaser's agent, that includes a description of items or services for which payment is made, the amount of the payment, and such additional information as the department reasonably may require.

(4) This section does not apply to sales of tangible personal property purchased or to sales of, costs of, or charges made for labor and services used for maintenance or repairs of pollution control equipment.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due as follows:

| Year event occurs | Portion of previously exempted tax due |
|-------------------|--|
| 2003              | 100%                                   |
| 2004              | 95%                                    |
| 2005              | 90%                                    |
| 2006              | 85%                                    |
| 2007              | 80%                                    |
| 2008              | 75%                                    |
| 2009              | 70%                                    |
| 2010              | 65%                                    |
| 2011              | 60%                                    |
| 2012              | 55%                                    |
| 2013              | 50%                                    |
| 2014              | 45%                                    |
| 2015              | 40%                                    |
| 2016              | 35%                                    |
| 2017              | 30%                                    |
| 2018              | 25%                                    |
| 2019              | 20%                                    |
| 2020              | 15%                                    |
| 2021              | 10%                                    |
| 2022              | 5%                                     |
| 2023              | 0%                                     |

(6) RCW 82.32.393 applies to this section. [1997 c 368 § 2.]

**Findings—Intent—1997 c 368:** "(1) The legislature finds that:

(a) Thermal electric generation facilities play an important role in providing jobs for residents of the communities where such plants are located; and

(b) Taxes paid by thermal electric generation facilities help to support schools and local and state government operations.

(2) It is the intent of the legislature to assist thermal electric generation facilities placed in operation after December 31, 1969, and before July 1, 1975, to update their air pollution control equipment and abate pollution by extending certain tax exemptions and credits so that such plants may continue to play a long-term vital economic role in the communities where they are located." [1997 c 368 § 1.]

**Rules adoption—1997 c 368:** "The department of revenue and the department of ecology may adopt rules to implement this act." [1997 c 368 § 15.]

**Severability—1997 c 368:** "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." [1997 c 368 § 16.]

**Effective date—1997 c 368:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 1997]." [1997 c 368 § 17.]

**82.08.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.** (1) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975.

(2) Beginning January 1, 1999, the tax levied by RCW 82.08.020 does not apply to sales of coal used to generate electric power at a generation facility operated by a business if the following conditions are met:

(a) The owners must make an application to the department of revenue for a tax exemption;

(b) The owners must make a demonstration to the department of ecology that the owners have made reasonable initial progress to install air pollution control facilities to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW;

(c) Continued progress must be made on the development of air pollution control facilities to meet the requirements of the permit; and

(d) The generation facility must emit no more than ten thousand tons of sulfur dioxide during a previous consecutive twelve-month period.

(3) During a consecutive twelve-month period, if the generation facility is found to be in violation of excessive sulfur dioxide emissions from a regional air pollution control authority or the department of ecology, the department of ecology shall notify the department of revenue and the owners of the generation facility shall lose their tax exemption under this section. The owners of a generation facility may reapply for the tax exemption when they have once again met the conditions of subsection (2)(d) of this section.

(4) RCW 82.32.393 applies to this section. [1997 c 368 § 4.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.08.812 Exemptions—Coal used at coal-fired thermal electric generation facility—Forfeiture upon use of nonlocal coal sources—Reinstatement.** Any business that has received a tax exemption under RCW 82.08.811 forfeits the exemption if, except for reasons or factors beyond the control of the owners or operator of the thermal electric generation facility, less than seventy percent of the coal consumed at the thermal electric generation facility during the previous calendar year was produced by a mine located in the same county as the facility or in a county contiguous to the county. The department of revenue may reinstate the exemption under RCW 82.08.811 when the owners provide documentation that the seventy-percent requirement has been met during a subsequent calendar year. The definitions in RCW 82.08.811 apply to this section. [1997 c 368 § 5.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions.** (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished

goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repack finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(h) "Person" has the meaning given in RCW 82.04.030;

(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(j) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(k) "Third-party warehouse" means a person taxable under RCW 82.04.280(4);

(l) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(m) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible

personal property, but "wholesaler" does not include a person who makes sales exempt under 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.61, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments. [1997 c 450 § 2.]

**Findings—Intent—1997 c 450:** "The legislature finds that the state's overall economic health and prosperity is bolstered through tax incentives targeted to specific industries. The warehouse and distribution industry is critical to other businesses. The transportation sector, the retail sector, the ports, and the wholesalers all rely on the warehouse and distribution industry. It is the intent of the legislature to stimulate interstate trade by providing tax incentives to those persons in the warehouse and distribution industry engaged in highly competitive trade." [1997 c 450 § 1.]

**Report—1997 c 450:** "The legislative fiscal committees shall report to the legislature by December 1, 2001, on the economic impacts of this act. This report shall analyze employment and other relevant economic data pertaining to the tax exemptions authorized under this act and shall measure the effect on the creation or retention of family-wage jobs and diversifica-

tion of the state's economy. The report must include the committee's findings on the tax incentive program's performance in achieving its goals and recommendations on ways to improve its effectiveness. Analytic techniques may include, but not be limited to, comparisons of Washington to other states that did not enact business tax changes, comparisons across Washington counties based on usage of the tax exemptions, and comparisons across similar firms based on their use of the tax exemptions. In performing the analysis, the legislative fiscal committees shall consult with business and labor interests. The department of revenue, the employment security department, and other agencies shall provide to the legislative fiscal committees such data as the legislative fiscal committees may request in performing the analysis required under this section." [1997 c 450 § 6.]

**Effective date—1997 c 450:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 450 § 7.]

**82.08.830 Exemptions—Sales at camp or conference center by nonprofit organization.** (*Effective October 1, 1997.*) The tax levied by RCW 82.08.020 shall not apply to a sale made at a camp or conference center if the gross income from the sale is exempt under RCW 82.04.363. [1997 c 388 § 2.]

**Effective date—1997 c 388:** See note following RCW 82.04.363.

## Chapter 82.12 USE TAX

### Sections

- 82.12.0251 Exemptions—Use by nonresident while temporarily within Washington of tangible personal property brought into Washington—Use by nonresident of motor vehicle or trailer licensed in another state—Use by resident or nonresident member of armed forces of household goods, personal effects, and private motor vehicles acquired in another state while a resident—"State" defined.
- 82.12.02566 Exemptions—Use of tangible personal property incorporated in prototype for aircraft parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.
- 82.12.02685 Exemptions—Use of tangible personal property related to agricultural employee housing.
- 82.12.0277 Exemptions—Use of insulin, prosthetic devices, orthotic devices, hearing instruments, medicines used in treatment by a naturopath, ostomic items, and medically prescribed oxygen. (*Effective October 1, 1998.*)
- 82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis. (*Expires July 1, 1999.*)
- 82.12.800 Exemptions—Uses of vessel, vessel's trailer by manufacturer.
- 82.12.801 Exemptions—Uses of vessel, vessel's trailer by dealer.
- 82.12.802 Vessels held in inventory by dealer or manufacturer—Tax on personal use—Documentation—Rules.
- 82.12.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Payments on cessation of operation.
- 82.12.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.
- 82.12.812 Exemptions—Coal used at coal-fired thermal electric generation facility—Forfeiture upon use of nonlocal coal sources—Reinstatement.
- 82.12.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions.

**82.12.0251 Exemptions—Use by nonresident while temporarily within Washington of tangible personal property brought into Washington—Use by nonresident of motor vehicle or trailer licensed in another state—Use by resident or nonresident member of armed forces of household goods, personal effects, and private motor vehicles acquired in another state while a resident—“State” defined.** The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington; or in respect to the use by a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or in respect to the use of household goods, personal effects, and private motor vehicles, not including motor homes, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington.

For purposes of this section, “state” means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof. [1997 c 301 § 1; 1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.02566 Exemptions—Use of tangible personal property incorporated in prototype for aircraft parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.** (1) The provisions of this chapter shall not apply with respect to the use of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or in respect to the use of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply in respect to the use of tangible personal property by any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, “total taxable amount” means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.08.02566 shall not exceed one hundred thousand dollars for any person during any calendar year. [1997 c 302 § 2; 1996 c 247 § 5.]

**Effective date—1997 c 302:** See note following RCW 82.08.02566.

**Findings—Intent—1996 c 247:** See note following RCW 82.08.02566.

**82.12.02685 Exemptions—Use of tangible personal property related to agricultural employee housing.** (1) The provisions of this chapter shall not apply in respect to the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of a tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time agricultural employee housing that is not located on agricultural land ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as agricultural employee housing until the date of payment.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) The definitions in RCW 82.08.02745(5) apply to this section. [1997 c 438 § 2; 1996 c 117 § 2.]

**Effective date—1997 c 438:** See note following RCW 82.08.02745.

**Effective date—1996 c 117:** See note following RCW 82.08.02745.

**82.12.0277 Exemptions—Use of insulin, prosthetic devices, orthotic devices, hearing instruments, medicines used in treatment by a naturopath, ostomic items, and medically prescribed oxygen. (Effective October 1, 1998.)**

The provisions of this chapter shall not apply in respect to the use of insulin; prosthetic devices; orthotic devices prescribed for an individual by a person licensed under chapters 18.25, 18.57, or 18.71 RCW; hearing instruments dispensed or fitted by a person licensed or certified under chapter 18.35 RCW; medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; ostomic items; and medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual. [1997 c 224 § 2; 1996 c 162 § 2; 1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

**Effective date—1997 c 224:** See note following RCW 82.08.0283.

**Effective date—1996 c 162:** See note following RCW 82.08.0283.

**Finding—Intent—1991 c 250:** See note following RCW 82.08.0283.

**Effective date—1986 c 255:** See note following RCW 82.08.0283.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis. (Expires July 1, 1999.)** The provisions of this chapter shall not apply in respect to the use of any item acquired by a health or social welfare organization, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. This section shall expire July 1, 1999. [1997 c 386 § 57; 1995 c 346 § 2.]

**Effective date—1997 c 386 §§ 56, 57:** See note following RCW 82.08.02915.

**Effective date—1995 c 346:** See note following RCW 82.08.02915.  
*Youth in crisis—Definition—Limited purpose:* RCW 82.08.02917.

**82.12.800 Exemptions—Uses of vessel, vessel's trailer by manufacturer.** (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.010, by the manufacturer of the vessel:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, to include performance, endurance, and sink testing, if the vessel is to be held for sale;

(b) Training activities of a manufacturer's employees, agents, or subcontractors involved in the development and manufacturing of the manufacturer's vessels, if the vessel is to be held for sale;

(c) Activities to promote the sale of the manufacturer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from vessel promotional events for the express purpose of displaying a manufacturer's vessels;

(d) Any vessels loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.010, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [1997 c 293 § 1.]

**82.12.801 Exemptions—Uses of vessel, vessel's trailer by dealer.** (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel,

as defined in RCW 88.02.010, by a vessel dealer registered under chapter 88.02 RCW:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, if the vessel is held for sale;

(b) Training activity of a dealer's employees, agents, or subcontractors involved in the sale of the dealer's vessels, if the vessel is held for sale;

(c) Activities to promote the sale of the dealer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from promotional vessel events for the express purpose of displaying a dealer's vessels for sale, provided it is displayed on the vessel that it is, in fact, for sale and the identification of the registered vessel dealer offering the vessel for sale is also displayed on the vessel;

(d) Any vessel loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.010, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [1997 c 293 § 2.]

**82.12.802 Vessels held in inventory by dealer or manufacturer—Tax on personal use—Documentation—Rules.** If a vessel held in inventory is used by a vessel dealer or vessel manufacturer for personal use, use tax shall be due based only on the reasonable rental value of the vessel used, but only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. The department may by rule require dealers and manufacturers to provide vessel logs or other documentation showing that vessels are truly held for sale. [1997 c 293 § 3.]

**82.12.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Payments on cessation of operation.** (1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The provisions of this chapter do not apply in respect to the use of air pollution control facilities installed and used by a light and power business, as defined in RCW 82.16.010, in generating electric power.

(3) The exemption provided under this section applies only to air pollution control facilities that are:

(a) Constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975; and

(b) Constructed or installed to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW.

(4) This section does not apply to the use of tangible personal property for maintenance or repairs of the pollution control equipment.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due according to the schedule provided in RCW 82.08.810(5).

(6) RCW 82.32.393 applies to this section. [1997 c 368 § 3.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.12.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.** (1) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975.

(2) Beginning January 1, 1999, the provisions of this chapter do not apply in respect to the use of coal to generate electric power at a generation facility operated by a business if the following conditions are met:

(a) The owners must make an application to the department of revenue for a tax exemption;

(b) The owners must make a demonstration to the department of ecology that the owners have made reasonable initial progress to install air pollution control facilities to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW;

(c) Continued progress must be made on the development of air pollution control facilities to meet the requirements of the permit; and

(d) The generation facility must emit no more than ten thousand tons of sulfur dioxide during a previous consecutive twelve-month period.

(3) During a consecutive twelve-month period, if the generation facility is found to be in violation of excessive sulfur dioxide emissions from a regional air pollution control authority or the department of ecology, the department of ecology shall notify the department of revenue and the owners of the generation facility shall lose their tax exemption under this section. The owners of a generation facility may reapply for the tax exemption when they have once again met the conditions of subsection (2)(d) of this section.

(4) RCW 82.32.393 applies to this section. [1997 c 368 § 6.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.12.812 Exemptions—Coal used at coal-fired thermal electric generation facility—Forfeiture upon use of nonlocal coal sources—Reinstatement.** Any business that has received a tax exemption under RCW 82.12.811 forfeits the exemption if, except for reasons or factors beyond the control of the owners or operator of the thermal electric generation facility, less than seventy percent of the coal consumed at the thermal electric generation facility during the previous calendar year was produced by a mine located in the same county as the facility or in a county contiguous to the county. The department of revenue may reinstate the exemption under RCW 82.12.811 when the owners provide documentation that the seventy-percent requirement has been met during a subsequent calendar year. The definitions in RCW 82.12.811 apply to this section. [1997 c 368 § 7.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.12.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions.** (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator\*.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand and for grain elevators with bushel

capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.61, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section. [1997 c 450 § 3.]

**\*Reviser's note:** The words ", are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax" appear to have been inadvertently removed in the drafting process. Compare with RCW 82.08.820(1).

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

## Chapter 82.14

### LOCAL RETAIL SALES AND USE TAXES

#### Sections

- 82.14.020 Definitions—Where retail sale occurs.
- 82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals.
- 82.14.0494 Sales and use tax for stadium and exhibition center—Deduction from tax otherwise required—Transfer and deposit of revenues. (*Contingent expiration date.*)
- 82.14.200 County sales and use tax equalization account—Allocation procedure.
- 82.14.370 Sales and use tax for distressed counties—Public facilities in rural counties.

- 82.14.820 Warehouse and grain elevators and distribution centers—Exemption does not apply.

#### 82.14.020 Definitions—Where retail sale occurs.

For purposes of this chapter:

(1) A retail sale consisting solely of the sale of tangible personal property shall be deemed to have occurred at the retail outlet at or from which delivery is made to the consumer;

(2) A retail sale consisting essentially of the performance of personal business or professional services shall be deemed to have occurred at the place at which such services were primarily performed, except that for the performance of a tow truck service, as defined in RCW 46.55.010, the retail sale shall be deemed to have occurred at the place of business of the operator of the tow truck service;

(3) A retail sale consisting of the rental of tangible personal property shall be deemed to have occurred (a) in the case of a rental involving periodic rental payments, at the primary place of use by the lessee during the period covered by each payment, or (b) in all other cases, at the place of first use by the lessee;

(4) A retail sale within the scope of the second paragraph of RCW 82.04.050, and a retail sale of taxable personal property to be installed by the seller shall be deemed to have occurred at the place where the labor and services involved were primarily performed;

(5) A retail sale consisting of the providing to a consumer of telephone service, as defined in RCW 82.04.065, other than a sale of tangible personal property under subsection (1) of this section or a rental of tangible personal property under subsection (3) of this section, shall be deemed to have occurred at the situs of the telephone or other instrument through which the telephone service is rendered;

(6) "City" means a city or town;

(7) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;

(8) "Taxable event" shall mean any retail sale, or any use of an article of tangible personal property, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;

(9) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals.** The legislative authority of any county may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the county that are taxable by



the state under chapters 82.08 and 82.12 RCW. The rate of tax shall be one percent of the selling price in the case of a sales tax or rental value of the vehicle in the case of a use tax. Proceeds of the tax shall not be used to subsidize any professional sports team and shall be used solely for the following purposes:

- (1) Acquiring, constructing, maintaining, or operating public sports stadium facilities;
- (2) Engineering, planning, financial, legal, or professional services incidental to public sports stadium facilities;
- (3) Youth or amateur sport activities or facilities; or
- (4) Debt or refinancing debt issued for the purposes of subsection (1) of this section.

At least seventy-five percent of the tax imposed under this section shall be used for the purposes of subsections (1), (2), and (4) of this section. [1997 c 220 § 502 (Referendum Bill No. 48, approved June 17, 1997); 1992 c 194 § 3.]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Legislative intent—1992 c 194:** See note following RCW 82.08.020.

**Effective dates—1992 c 194:** See note following RCW 46.04.466.

**82.14.0494 Sales and use tax for stadium and exhibition center—Deduction from tax otherwise required—Transfer and deposit of revenues. (Contingent expiration date.)** (1) The legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may impose a sales and use tax in accordance with this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall be 0.016 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Before the issuance of bonds in RCW 43.99N.020, all revenues collected on behalf of the county under this section shall be transferred to the public stadium authority. After bonds are issued under RCW 43.99N.020, all revenues collected on behalf of the county under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(4) The definitions in RCW 36.102.010 apply to this section.

(5) This section expires on the earliest of the following dates:

(a) December 31, 1999, if the conditions for issuance of bonds under RCW 43.99N.020 have not been met before that date;

(b) The date on which all bonds issued under RCW 43.99N.020 have been retired; or

(c) Twenty-three years after the date the tax under this section is first imposed. [1997 c 220 § 204 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**82.14.200 County sales and use tax equalization account—Allocation procedure.** There is created in the state treasury a special account to be known as the "county sales and use tax equalization account." Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in RCW 82.44.110(1)(f). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to April 1st of each year the director of revenue shall inform the state treasurer of the total and the per capita levels of revenues for the unincorporated area of each county and the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than one hundred fifty thousand dollars from the tax for the previous calendar year, an amount from the county sales and use tax equalization account sufficient, when added to the amount of revenues received the previous calendar year by the county, to equal one hundred fifty thousand dollars.

The department of revenue shall establish a governmental price index as provided in this subsection. The base year for the index shall be the end of the third quarter of 1982. Prior to November 1, 1983, and prior to each November 1st thereafter, the department of revenue shall establish another index figure for the third quarter of that year. The department of revenue may use the implicit price deflators for state and local government purchases of goods and services calculated by the United States department of commerce to establish the governmental price index. Beginning on January 1, 1984, and each January 1st thereafter, the one hundred fifty thousand dollar base figure in this subsection shall be adjusted in direct proportion to the percentage change in the governmental price index from 1982 until the year before the adjustment. Distributions made under this subsection for 1984 and thereafter shall use this adjusted base amount figure.

(3) Subsequent to the distributions under subsection (2) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties as determined by the department of revenue under subsection (1) of this section, an amount from the county sales and use tax equalization account sufficient, when added to the per capita level of

revenues for the unincorporated area received the previous calendar year by the county, to equal seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties determined under subsection (1) of this section, subject to reduction under subsections (6) and (7) of this section. When computing distributions under this section, any distribution under subsection (2) of this section shall be considered revenues received from the tax imposed under RCW 82.14.030(1) for the previous calendar year.

(4) Subsequent to the distributions under subsection (3) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (2) of this section, a third distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (2) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the total distribution under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) Subsequent to the distributions under subsection (4) of this section and at such times as distributions are made under RCW 82.44.150, as now or hereafter amended, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a fourth distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (3) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the distributions under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(6) Revenues distributed under subsections (2) through (5) of this section in any calendar year shall not exceed an amount equal to seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties during the previous calendar year. If distributions under subsections (3) through (5) of this section cannot be made because of this limitation, then distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties.

(7) If inadequate revenues exist in the county sales and use tax equalization account to make the distributions under subsections (3) through (5) of this section, then the distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties. At such time during the year as additional funds accrue to the county sales and use tax equalization account, additional distributions shall be made under subsections (3) through (5) of this section to the counties.

(8) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, at such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion an amount to the county public health account created in RCW 70.05.125 equal to the adjustment under RCW 70.05.125(2)(b).

(9) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) and (8) of this section, then the additional revenues shall be credited and transferred to the state general fund. [1997 c 333 § 2; 1991 sp.s. c 13 § 15; 1990 c 42 § 313; 1985 c 57 § 82; 1984 c 225 § 5; 1983 c 99 § 1; 1982 1st ex.s. c 49 § 21.]

**Effective date—1997 c 333:** See note following RCW 70.05.125.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Rules—1984 c 225:** See note following RCW 82.14.210.

**Severability—1983 c 99:** "If any provision of this act or chapter 49, Laws of 1982 1st ex. sess. or their application to any person or circumstance is held invalid, the remainder of these acts or the application of the provision to other persons or circumstances is not affected." [1983 c 99 § 10.]

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.14.370 Sales and use tax for distressed counties—Public facilities in rural counties.** (1) The legislative authority of a distressed county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.04 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Moneys collected under this section shall only be used for the purpose of financing public facilities in rural counties.

(4) No tax may be collected under this section before July 1, 1998. No tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(5) For purposes of this section, "distressed county" means a county in which the average level of unemployment for the three years before the year in which a tax is first imposed under this section exceeds the average state employment for those years by twenty percent. [1997 c 366 § 3.]

**Intent—1997 c 366:** "The legislature recognizes the economic hardship that rural distressed areas throughout the state have undergone in recent years. Numerous rural distressed areas across the state have encountered serious economic downturns resulting in significant job loss

and business failure. In 1991 the legislature enacted two major pieces of legislation to promote economic development and job creation, with particular emphasis on worker training, income, and emergency services support, along with community revitalization through planning services and infrastructure assistance. However even though these programs have been of assistance, rural distressed areas still face serious economic problems including: Above-average unemployment rates from job losses and below-average employment growth; low rate of business start-ups; and persistent erosion of vitally important resource-driven industries.

The legislature also recognizes that rural distressed areas in Washington have an abiding ability and consistent will to overcome these economic obstacles by building upon their historic foundations of business enterprise, local leadership, and outstanding work ethic.

The legislature intends to assist rural distressed areas in their ongoing efforts to address these difficult economic problems by providing a comprehensive and significant array of economic tools, necessary to harness the persistent and undaunted spirit of enterprise that resides in the citizens of rural distressed areas throughout the state.

The further intent of this act is to provide:

(1) A strategically designed plan of assistance, emphasizing state, local, and private sector leadership and partnership;

(2) A comprehensive and significant array of business assistance, services, and tax incentives that are accountable and performance driven;

(3) An array of community assistance including infrastructure development and business retention, attraction, and expansion programs that will provide a competitive advantage to rural distressed areas throughout Washington; and

(4) Regulatory relief to reduce and streamline zoning, permitting, and regulatory requirements in order to enhance the capability of businesses to grow and prosper in rural distressed areas." [1997 c 366 § 1.]

**Goals—1997 c 366:** "The primary goals of chapter 366, Laws of 1997 are to:

(1) Promote the ongoing operation of business in rural distressed areas;

(2) Promote the expansion of existing businesses in rural distressed areas;

(3) Attract new businesses to rural distressed areas;

(4) Assist in the development of new businesses from within rural distressed areas;

(5) Provide family wage jobs to the citizens of rural distressed areas; and

(6) Promote the development of communities of excellence in rural distressed areas." [1997 c 366 § 2.]

**Severability—1997 c 366:** "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." [1997 c 366 § 11.]

**Captions and part headings not law—1997 c 366:** "Section captions and part headings used in this act are not any part of the law." [1997 c 366 § 12.]

**82.14.820 Warehouse and grain elevators and distribution centers—Exemption does not apply.** The exemptions in RCW 82.08.820 and 82.12.820 are for the state portion of the sales and use tax and do not extend to the tax imposed in this chapter. [1997 c 450 § 4.]

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

## Chapter 82.16

### PUBLIC UTILITY TAX

Sections

82.16.042 Exemptions—Water services supplied by small water-sewer districts or systems—Certification by department of health. (*Expires July 1, 2003.*)

**82.16.042 Exemptions—Water services supplied by small water-sewer districts or systems—Certification by**

**department of health. (*Expires July 1, 2003.*)** (1) This chapter does not apply to amounts received for water services supplied by a water-sewer district established under Title 57 RCW that has been certified by the department of health as:

(a) Having less than one thousand five hundred connections; and

(b) Charging residential water rates that exceed one hundred twenty-five percent of the state-wide average water rate.

(2) This chapter does not apply to amounts received for water services supplied by a water system that has been certified by the department of health as:

(a) Being operated or owned by a qualified satellite management agency under RCW 70.116.134;

(b) Having less than two hundred connections; and

(c) Charging residential water rates that exceed one hundred twenty-five percent of the state-wide average water rate.

(3) To receive an exemption under this section, the water system shall supply to the department of health proof that an amount equal to at least ninety percent of the value of the exemption shall be expended to repair, equip, maintain, and upgrade the water system.

(4) The department of health shall certify to the department of revenue the eligibility of water districts and water systems under this section. In order to determine eligibility, the department of health may use rate information provided in surveys and reports produced by the association of Washington cities, an association of elected officials, or other municipal association to estimate a state-wide average residential water rate. The department of health shall update the estimated state-wide average residential water rate by July 1 of each year that this section remains in effect.

(5) This section expires July 1, 2003. [1997 c 407 § 3.]

**Findings—1997 c 407:** See note following RCW 82.04.312.

## Chapter 82.23B

### OIL SPILL RESPONSE TAX

Sections

82.23B.020 Oil spill response tax—Oil spill administration tax.

**82.23B.020 Oil spill response tax—Oil spill administration tax.** (1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of

the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill administration account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than ten million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars. [1997 c 449 § 2; 1995 c 399 § 214; 1992 c 73 § 7; 1991 c 200 § 802.]

**Effective date—1997 c 449:** See note following RCW 43.211.005.

**Severability—1992 c 73:** See RCW 90.56.905.

## Chapter 82.24

### TAX ON CIGARETTES

#### Sections

|           |   |
|-----------|---|
| 82.24.010 | Definitions.  |
| 82.24.110 | Other offenses—Penalties.   |
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| 82.24.550 | Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.                               |
| 82.24.551 | Enforcement—Appointment of officers of liquor control board.                                    |

**82.24.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Board" means the liquor control board.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(3) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

(4) "Precollection obligation" means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller's buyer.

(5) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any

one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(6) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state.

(7) "Stamp" means the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(8) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

(9) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter. [1997 c 420 § 3; 1995 c 278 § 1; 1961 c 15 § 82.24.010. Prior: 1959 c 270 § 9; 1949 c 228 § 14; 1935 c 180 § 83; Rem. Supp. 1949 § 8370-83.]

**Effective date—1995 c 278:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 278 § 17.]

**82.24.110 Other offenses—Penalties.** (1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) To violate any of the provisions of this chapter;

(f) To violate any lawful rule made and published by the department of revenue or the board;

(g) To use any stamps more than once;

(h) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(i) Except as provided in this chapter, for any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(j) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(k) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he

or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(l) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(m) For any person to possess or transport in this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless: (i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport in this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (a) Proper notice as required by RCW 82.24.250 has been given; (b) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (c) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter. [1997 c 420 § 4; 1995 c 278 § 7; 1990 c 216 § 4; 1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370-86.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.130 Seizure and forfeiture.** (1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers.

(b) 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 (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, 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) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler or retailer, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband. [1997 c 420 § 5; 1990 c 216 § 5; 1987 c 496 § 2; 1972 ex.s. c 157 § 5; 1961 c 15 § 82.24.130. Prior: 1941 c 178 § 16; 1935 c 180 § 88; Rem. Supp. 1941 § 8370-88.]

**Severability—1972 ex.s. c 157:** See note following RCW 82.24.020.

**82.24.190 Search and seizure.** When the department of revenue or the board has good reason to believe that any of the articles taxed herein are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter or regulations issued under authority hereof, it may make affidavit of such fact, describing the place or thing to be searched, before any judge of any court in this state, and such judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department of revenue commanding him or her diligently to search any building, room in a building, place or vehicle as may be designated in the affidavit and search warrant, and to seize such tobacco so possessed and to hold the same until disposed of by law, and to arrest the person in possession or control thereof. If upon the return of such warrant, it shall appear that any of the articles taxed herein, unlawfully possessed, were seized, the same shall be sold as provided in this chapter. [1997 c 420 § 6; 1987 c 202 § 244; 1975 1st ex.s. c 278 § 67; 1961 c 15 § 82.24.190.

Prior: 1949 c 228 § 16; 1935 c 180 § 91; Rem. Supp. 1949 § 8370-91.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.**

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by chapter 82.24 RCW to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" means:

(a) A wholesaler or retailer, licensed under Washington state law;

(b) The United States or an agency thereof; and

(c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or

otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department. [1997 c 420 § 7; 1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Severability—1972 ex.s. c 157:** See note following RCW 82.24.020.

**82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.** (1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce the provisions of this chapter.

(2) The department of revenue may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The department of revenue has full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department of revenue. The department of revenue, upon a finding by same, that the licensee has failed to comply with any provision of this chapter or any rule promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or plural offender, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the department of revenue finds the offender has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any person whose license or licenses have been so revoked may apply to the department of revenue at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department of revenue if it appears to the satisfaction of the department of revenue that the licensee will comply with the provisions of this chapter and the rules promulgated thereunder.

(5) A person whose license has been suspended or revoked shall not sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(6) Any determination and order by the department of revenue, and any order of suspension or revocation by the department of revenue of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department of revenue and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department of revenue and the board. [1997 c 420 § 8; 1993 c 507 § 17; 1986 c 321 § 9.]

**Finding—Severability—1993 c 507:** See RCW 70.155.005 and 70.155.900

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

**82.24.551 Enforcement—Appointment of officers of liquor control board.** The department shall appoint, as duly authorized agents, enforcement officers of the liquor control board to enforce provisions of this chapter. These officers shall not be considered employees of the department. [1997 c 420 § 10.]

## Chapter 82.26

### TAX ON TOBACCO PRODUCTS

#### Sections

82.26.121 Enforcement—Appointment of officers of liquor control board.

**82.26.121 Enforcement—Appointment of officers of liquor control board.** The department shall appoint, as duly authorized agents, enforcement officers of the liquor control board to enforce provisions of this chapter. These officers shall not be considered employees of the department. [1997 c 420 § 11.]

## Chapter 82.29A

### LEASEHOLD EXCISE TAX

#### Sections

82.29A.130 Exemptions.

**82.29A.130 Exemptions.** The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PROVIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.



(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for disabled persons of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing

other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas. [1997 c 220 § 202 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Effective date—1995 c 138:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 138 § 2.]

## Chapter 82.32

### GENERAL ADMINISTRATIVE PROVISIONS

| Sections  |  |
|-----------|--|
| 82.32.050 | Deficient tax or penalty payments—Notice—Interest—Limitations.   |
| 82.32.060 | Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund.  |
| 82.32.070 | Records to be preserved—Examination—Estoppel to question assessment—Unified business identifier account number records.  |
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| 82.32.393 | Thermal electric generation facilities with tax exemptions for air pollution control equipment—Payments upon cessation of operation. ( <i>Expires December 31, 2015.</i> ) |
| 82.32.410 | Written determinations as precedents.  |

**82.32.050 Deficient tax or penalty payments—Notice—Interest—Limitations.** (1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail of the additional amount

and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c) Interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest shall be computed until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States secretary of the treasury.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(4) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date. [1997 c 157 § 1; 1996 c 149 § 2; 1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937 c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

**Findings—Intent—1996 c 149:** "The legislature finds that a consistent application of interest and penalties is in the best interest of the

residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue." [1996 c 149 § 1.]

**Effective date—1996 c 149:** "This act shall take effect January 1, 1997." [1996 c 149 § 20.]

**Effective date—Applicability—1992 c 169:** "(1) This act shall take effect July 1, 1992.

(2) This act is effective for all written waivers that remain enforceable as of July 1, 1992." [1992 c 169 § 4.]

**Effective date—1991 c 142 §§ 9-11:** "Sections 9 through 11 of this act shall take effect January 1, 1992." [1991 c 142 § 13.]

**Severability—1991 c 142:** See RCW 82.32A.900.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund.** (1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsections (2) and (3) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2) The execution of a written waiver under RCW 82.32.050 or 82.32.100 shall extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(3) Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or subcontracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which the taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund is filed by the taxpayer with the department within one year of the date that the amount of the refund or credit due to the United States is finally determined and filed within four years of the date on which the tax was paid: PROVIDED, That no interest shall be allowed on such refund.

(4) Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under

RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

(5) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same manner, as provided in subsection (4) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year. [1997 c 157 § 2; 1992 c 169 § 2; 1991 c 142 § 10; 1990 c 69 § 1; 1989 c 378 § 20; 1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

**Effective date—Applicability—1992 c 169:** See note following RCW 82.32.050.

**Effective date—1991 c 142 §§ 9-11:** See note following RCW 82.32.050.

**Severability—1991 c 142:** See RCW 82.32A.900.

**Effective date—1990 c 69:** "This act shall take effect January 1, 1991." [1990 c 69 § 5.]

**Severability—1990 c 69:** "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." [1990 c 69 § 4.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.32.070 Records to be preserved—Examination—Estoppel to question assessment—Unified business identifier account number records.** (1)(a) Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the department of revenue. In the case of an out-of-state person or concern which does not keep the necessary books and records within this state, it shall be sufficient if it produces within the state such books and records as shall be required by the department of revenue, or permits the examination by an agent authorized or designated by the department of revenue at the place where such books and

records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

(b) A person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the director, but not to exceed two hundred fifty dollars. The department shall notify the taxpayer and collect the penalty in the same manner as penalties under RCW 82.32.100.

(2) Any person claiming a credit against the tax imposed by chapter 82.04 RCW by reason of the provisions of \*RCW 82.04.435 shall keep and preserve until the claim has been verified or allowed by the department of revenue sufficient books, records and invoices to prove the right to and amount of such claim for credit, and no such claim shall be allowed by the department of revenue unless such books, records and invoices have been kept and preserved. [1997 c 54 § 4; 1983 c 3 § 221; 1967 ex.s. c 89 § 2; 1961 c 15 § 82.32.070. Prior: 1951 1st ex.s. c 9 § 7; 1935 c 180 § 190; RRS § 8370-190.]

**\*Reviser's note:** RCW 82.04.435 was decodified pursuant to 1997 c 156 § 10.

**82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Records—Payment must accompany return.** Payment of the tax may be made by uncertified check under such regulations as the department shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Payment of the tax shall be made by electronic funds transfer, as defined in RCW 82.32.085, if the amount of the tax due in a calendar year is one million eight hundred thousand dollars or more. The department may by rule provide for tax thresholds between two hundred forty thousand dollars and one million eight hundred thousand dollars for mandatory use of electronic funds transfer. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this section to require electronic funds transfer for those taxes reported on the department's combined excise tax return or any successor return.

A return or remittance which is transmitted to the department 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, except as otherwise provided in this chapter.

The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file

returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days shall be conditional on deposit with the department of an amount to be determined by the department which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit shall be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

The department shall review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

The department shall keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department shall apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

The department may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon. When such return is not accepted, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return shall not apply when a return is timely filed and a timely payment has been made by electronic funds transfer. [1997 c 156 § 3; 1990 c 69 § 2; 1971 ex.s. c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080. Prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

**Severability—Effective date—1990 c 69:** See notes following RCW 82.32.060.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

*Tax returns, remittances, etc., filing and receipt when transmitted by mail:* RCW 1.12.070.

**82.32.180 Court appeal—Procedure.** Any person, except one who has failed to keep and preserve books, records, and invoices as required in this chapter and chapter 82.24 RCW, having paid any tax as required and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston county, within the time limitation for a refund provided in chapter 82.32 RCW or, if an application for refund has been made to the department within that time limitation, then within thirty days after rejection of the application, whichever time limitation is later. In the appeal the taxpayer shall set forth the amount of the tax imposed upon the taxpayer which the taxpayer concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the department within the time herein specified and by filing the

original thereof with proof of service with the clerk of the superior court of Thurston county.

The trial in the superior court on appeal shall be de novo and without the necessity of any pleadings other than the notice of appeal. At trial, the burden shall rest upon the taxpayer to prove that the tax as paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding the taxpayer shall be deemed the plaintiff, and the state, the defendant; and both parties shall be entitled to subpoena the attendance of witnesses as in other civil actions and to produce evidence that is competent, relevant, and material to determine the correct amount of the tax that should be paid by the taxpayer. Either party may seek appellate review in the same manner as other civil actions are appealed to the appellate courts.

It shall not be necessary for the taxpayer to protest against the payment of any tax or to make any demand to have the same refunded or to petition the director for a hearing in order to appeal to the superior court, but no court action or proceeding of any kind shall be maintained by the taxpayer to recover any tax paid, or any part thereof, except as herein provided.

The provisions of this section shall not apply to any tax payment which has been the subject of an appeal to the board of tax appeals with respect to which appeal a formal hearing has been elected. [1997 c 156 § 4; 1992 c 206 § 4; 1989 c 378 § 23; 1988 c 202 § 67; 1971 c 81 § 148; 1967 ex.s. c 26 § 51; 1965 ex.s. c 141 § 5; 1963 ex.s. c 28 § 9; 1961 c 15 § 82.32.180. Prior: 1951 1st ex.s. c 9 § 12; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

**Effective date—1992 c 206:** See note following RCW 82.04.170.

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

*Appeal to board of tax appeals, formal hearing:* RCW 82.03.160.

**82.32.210 Tax warrant—Filing—Lien—Effect.** (1)

If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department of revenue may issue a warrant under its official seal in the amount of such unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment. If, however, the department of revenue believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which fees, taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the fee, tax or penalty to be immediately due and payable and may issue a warrant immediately.

(a) Interest imposed before January 1, 1999, shall be computed at the rate of one percent of the amount of the warrant for each thirty days or portion thereof.

(b) Interest imposed after December 31, 1998, shall be computed on a daily basis on the amount of outstanding tax or fee at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year. As used in this subsection, "fee" does not include an administrative filing fee such as a court filing fee and warrant fee.

(2) The department shall file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. Upon filing, the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the fee, tax or portion thereof and any increases and penalties for which the warrant is issued and the date when the copy is filed, and thereupon the amount of the warrant so docketed shall become a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom the warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of the personal property in any way affects the lien.

(3) The lien shall not be superior, however, to bona fide interests of third persons which had vested prior to the filing of the warrant when the third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction.

(4) The amount of the warrant so docketed shall thereupon also become a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied. [1997 c 157 § 3; 1987 c 405 § 15; 1983 1st ex.s. c 55 § 8; 1967 ex.s. c 89 § 3; 1961 c 15 § 82.32.210. Prior: 1955 c 389 § 38; prior: 1951 1st ex.s. c 9 § 13; 1949 c 228 § 225, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

**Severability—1987 c 405:** See note following RCW 70.94.450.

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**82.32.300 Department of revenue to administer—Chapters enforced by liquor control board.** The administration of this and chapters 82.04 through 82.27 RCW of this title is vested in the department of revenue which shall prescribe forms and rules of procedure for the determination of the taxable status of any person, for the making of returns and for the ascertainment, assessment and collection of taxes and penalties imposed thereunder.

The department of revenue shall make and publish rules and regulations, not inconsistent therewith, necessary to enforce provisions of this chapter and chapters 82.02 through 82.23B and 82.27 RCW, and the liquor control board shall make and publish rules necessary to enforce chapters 82.24 and 82.26 RCW, which shall have the same force and effect

as if specifically included therein, unless declared invalid by the judgment of a court of record not appealed from.

The department may employ such clerks, specialists, and other assistants as are necessary. Salaries and compensation of such employees shall be fixed by the department and shall be charged to the proper appropriation for the department.

The department shall exercise general supervision of the collection of taxes and, in the discharge of such duty, may institute and prosecute such suits or proceedings in the courts as may be necessary and proper. [1997 c 420 § 9; 1983 c 3 § 222; 1975 1st ex.s. c 278 § 90; 1961 c 15 § 82.32.300. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.392 Certain revenues to be deposited in sulfur dioxide abatement account.** An amount equal to all sales and use taxes paid under chapters 82.08, 82.12, and 82.14 RCW, that were obtained from the sales of coal to, or use of coal by, a business for use at a generation facility, and that meet the requirements of RCW 70.94.630, shall be deposited in the sulfur dioxide abatement account under RCW 70.94.630. [1997 c 368 § 9.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.32.393 Thermal electric generation facilities with tax exemptions for air pollution control equipment—Payments upon cessation of operation. (*Expires December 31, 2015.*)** If a business is allowed an exemption under RCW 82.08.810, 82.12.810, 82.08.811, 82.12.811, or 84.36.487, and the business ceases operation of the facility for which the exemption is allowed, the business shall deposit into the displaced workers account established in RCW 50.12.280 an amount equal to the fair market value of one-quarter of the total sulfur dioxide allowances authorized by federal law available to the facility at the time of cessation of operation of the generation facility as if the allowances were sold for a period of ten years following the time of cessation of operation of the generation facility. This section expires December 31, 2015. [1997 c 368 § 12.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.32.410 Written determinations as precedents.** (1) The director may designate certain written determinations as precedents.

(a) By rule adopted pursuant to chapter 34.05 RCW, the director shall adopt criteria which he or she shall use to decide whether a determination is precedential. These criteria shall include, but not be limited to, whether the determination clarifies an unsettled interpretation of Title 82 RCW or where the determination modifies or clarifies an earlier interpretation.

(b) Written determinations designated as precedents by the director shall be indexed by subject matter. The determinations and indexes shall be made available for public inspection and shall be published by the department.

(c) The department shall disclose any written determination upon which it relies to support any assessment of tax,

interest, or penalty against such taxpayer, after making the deletions provided by subsection (2) of this section.

(2) Before making a written determination available for public inspection under subsection (1) of this section, the department shall delete:

(a) The names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination; and

(b) Information the disclosure of which is specifically prohibited by any statute applicable to the department of revenue, and the department may also delete other information exempted from disclosure by chapter 42.17 RCW or any other statute applicable to the department of revenue. [1997 c 409 § 211; 1991 c 330 § 2.]

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

### Chapter 82.36

#### MOTOR VEHICLE FUEL TAX

##### Sections

82.36.095 Bankruptcy proceedings—Notice.  
82.36.335 Credits on tax in lieu of collection and refund.

**82.36.095 Bankruptcy proceedings—Notice.** A motor vehicle fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 7.]

**82.36.335 Credits on tax in lieu of collection and refund.** In lieu of the collection and refund of the tax on motor vehicle fuel used by a distributor in such a manner as would entitle a purchaser to claim refund under this chapter, credit may be given the distributor upon the distributor's tax return in the determination of the amount of the distributor's tax. Payment credits shall not be carried forward and applied to subsequent tax returns. [1997 c 183 § 8; 1961 c 15 § 82.36.335. Prior: 1957 c 218 § 14.]

### Chapter 82.38

#### SPECIAL FUEL TAX ACT

##### Sections

82.38.190 Procedures for claiming refunds or credits.  
82.38.245 Bankruptcy proceedings—Notice.

**82.38.190 Procedures for claiming refunds or credits.** (1) Claims under RCW 82.38.180 shall be filed with the department on forms prescribed by the department and shall show the date of filing and the period covered in the claim, the number of gallons of special fuel used for purposes subject to tax refund, and such other facts and information as may be required. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as may be prescribed by the department, and such other information as the department may require.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 shall first be credited on

any amounts then due and payable from the special fuel dealer or special fuel user or to any person to whom the refund is due, and the department shall then certify the balance thereof to the state treasurer, who shall thereupon draw his warrant for such certified amount to such special fuel dealer or special fuel user or any person.

(3) No refund or credit shall be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, subsections (1), (2), (4) and (5), and if not filed within this period the right to refund shall be forever barred.

(b) Within three years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(3). The department shall refund any amount paid that has been verified by the department to be more than ten dollars over the amount actually due for the reporting period. Payment credits shall not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(4) Within thirty days after disallowing any claim in whole or in part, the department shall serve written notice of its action on the claimant.

(5) Interest shall be paid upon any refundable amount or credit due under RCW 82.38.180(3) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the department that a claim may be filed or the date upon which the claim is approved by the department, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

If the department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(6) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [1997 c 183 § 10; 1996 c 91 § 4; 1979 c 40 § 14; 1973 1st ex.s. c 156 § 8; 1972 ex.s. c 138 § 5; 1971 ex.s. c 175 § 20.]

**Effective date—1996 c 91:** See note following RCW 46.87.150.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.36.280.

**82.38.245 Bankruptcy proceedings—Notice.** A special fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing,

notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 9.]

### Chapter 82.42 AIRCRAFT FUEL TAX

#### Sections

- 82.42.060 Payment of tax—Penalty for delinquency—Enforcement of collection—Provisions of RCW 82.36.040, 82.36.070, 82.36.110 through 82.36.140 made applicable.  
82.42.125 Bankruptcy proceedings—Notice.

**82.42.060 Payment of tax—Penalty for delinquency—Enforcement of collection—Provisions of RCW 82.36.040, 82.36.070, 82.36.110 through 82.36.140 made applicable.** The amount of aircraft fuel excise tax imposed under RCW 82.42.020 for each month shall be paid to the director on or before the twenty-fifth day of the month thereafter, and if not paid prior thereto, shall become delinquent at the close of business on that day, and a penalty of ten percent of such excise tax must be added thereto for delinquency. Any aircraft fuel tax, penalties, and interest payable under the provisions of this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the close of the monthly period for which the amount or any portion thereof should have been paid until the date of payment. RCW 82.36.070 applies to the issuance, refusal, or revocation of a license issued under this chapter. The provisions of RCW 82.36.110 relating to a lien for taxes, interests or penalties due, shall be applicable to the collection of the aircraft fuel excise tax provided in RCW 82.42.020, and the provisions of RCW 82.36.120, 82.36.130 and 82.36.140 shall apply to any distributor of aircraft fuel with respect to the aircraft fuel excise tax imposed under RCW 82.42.020. Payment credits shall not be carried forward and applied to subsequent tax returns. [1997 c 183 § 12; 1996 c 104 § 15; 1969 ex.s. c 254 § 5; 1969 c 139 § 4; 1967 ex.s. c 10 § 6.]

**82.42.125 Bankruptcy proceedings—Notice.** An aircraft fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 11.]

### Chapter 82.44 MOTOR VEHICLE EXCISE TAX

#### Sections

- 82.44.110 Disposition of revenue.

**82.44.110 Disposition of revenue.** The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

(a) 1.60 percent into the motor vehicle fund to defray administrative and other expenses incurred by the department in the collection of the excise tax.

(b) 8.15 percent into the Puget Sound capital construction account in the motor vehicle fund.

(c) 4.07 percent into the Puget Sound ferry operations account in the motor vehicle fund.

(d) 5.88 percent into the general fund to be distributed under RCW 82.44.155.

(e) 4.75 percent into the municipal sales and use tax equalization account in the general fund created in RCW 82.14.210.

(f) 1.60 percent into the county sales and use tax equalization account in the general fund created in RCW 82.14.200.

(g) 62.6440 percent into the general fund through June 30, 1995, and 57.6440 percent into the general fund beginning July 1, 1995.

(h) 5 percent into the transportation fund created in RCW 82.44.180 beginning July 1, 1995.

(i) 5.9686 percent into the county criminal justice assistance account created in RCW 82.14.310.

(j) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.320.

(k) 1.1937 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.330.

(l) 2.95 percent into the county public health account created in RCW 70.05.125.

Notwithstanding (i) through (k) of this subsection, no more than sixty million dollars shall be deposited into the accounts specified in (i) through (k) of this subsection for the period January 1, 1994, through June 30, 1995. Not more than five percent of the funds deposited to these accounts shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Motor vehicle excise tax funds appropriated for such enhancements shall not supplant existing funds from the state general fund. For the fiscal year ending June 30, 1998, and for each fiscal year thereafter, the amounts deposited into the accounts specified in (i) through (k) of this subsection shall not increase by more than the amounts deposited into those accounts in the previous fiscal year increased by the implicit price deflator for the previous fiscal year. Any revenues in excess of this amount shall be deposited into the violence reduction and drug enforcement account.

(2) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(2) into the transportation fund.

(3) The state treasurer shall deposit the excise tax imposed by RCW 82.44.020(3) into the air pollution control account created by RCW 70.94.015. [1997 c 338 § 68; 1997 c 149 § 911. Prior: 1995 1st sp.s. c 15 § 2; 1995 c 398 § 14; prior: 1993 sp.s. c 21 § 7; 1993 c 492 § 253; 1993 c 491 § 1; 1991 c 199 § 221; 1990 2nd ex.s. c 1 § 801; 1990 c 42 § 306; 1987 1st ex.s. c 9 § 7; 1982 1st ex.s. c 35 § 12; 1979 c 158 § 235; 1977 ex.s. c 332 § 2; 1974 ex.s. c 54 § 3; 1967 c 121 § 1; 1961 c 15 § 82.44.110; prior: 1957 c 128 § 1; 1955 c 259 § 6; 1943 c 144 § 10; Rem. Supp. 1943 § 6312-124; prior: 1937 c 228 § 9.]



**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Effective date—1995 1st sp.s. c 15:** See note following RCW 70.05.125.

**Effective dates—1993 sp.s. c 21:** See note following RCW 82.14.310.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective date—1993 c 491:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993." [1993 c 491 § 3.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Effective dates—Severability—Captions not law—1991 c 199:** See RCW 70.94.904 through 70.94.906.

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Severability—Effective date—1987 1st ex.s. c 9:** See notes following RCW 46.29.050.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Effective date—Severability—1977 ex.s. c 332:** See notes following RCW 82.44.020.

**Effective dates—1974 ex.s. c 54:** "Section 6 of this 1974 amendatory act shall not take effect until June 30, 1981, and the remainder of 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." [1974 ex.s. c 54 § 13.]

**Severability—1974 ex.s. c 54:** "If any provision of this 1974 amendatory act, or its application to any person or circumstances 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 54 § 14.]

## Chapter 82.45

### EXCISE TAX ON REAL ESTATE SALES

#### Sections

82.45.100 Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties.

**82.45.100 Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties.** (1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter shall bear interest from the time of sale until the date of payment.

(a) Interest imposed before January 1, 1999, shall be computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, shall be computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing

interest for that calendar year. The department of revenue shall provide written notification to the county treasurers of the variable rate on or before December 1 of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there shall be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection shall be collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee shall be personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless:

(a) An instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located; or

(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale.

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department shall assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through (6) shall be deposited in the housing trust fund as described in chapter 43.185 RCW. [1997 c 157 § 4; 1996 c 149 § 5; 1993 sp.s. c 25 § 507; 1988 c 286 § 5; 1982 c 176 § 1; 1981 c 167 § 2.]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Audits, assessments, and refunds—1982 c 176:** See note following chapter digest.

**Effective date—1981 c 167:** See note following RCW 82.45.150.

## Chapter 82.60

TAX DEFERRALS FOR INVESTMENT PROJECTS  
IN DISTRESSED AREAS

## Sections

82.60.040 Issuance of tax deferral certificate. (*Expires July 1, 2004.*)

**82.60.040 Issuance of tax deferral certificate. (*Expires July 1, 2004.*)** (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project that:

(a) Is located in an eligible area as defined in RCW 82.60.020(3) (a), (b), (c), (e), or (f);

(b) Is located in an eligible area as defined in RCW 82.60.020(3)(g) if seventy-five percent of the new qualified employment positions are to be filled by residents of a contiguous county that is an eligible area as defined in RCW 82.60.020(3) (a) or (f); or

(c) Is located in an eligible area as defined in RCW 82.60.020(3)(d) if seventy-five percent of the new qualified employment positions are to be filled by residents of a designated community empowerment zone approved under RCW 43.63A.700 located within the county in which the eligible investment project is located.

(2) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium. [1997 c 156 § 5; 1995 1st sp.s. c 3 § 6; 1994 sp.s. c 1 § 3; 1986 c 116 § 13; 1985 c 232 § 4.]

**Expiration date—1997 c 156 § 5:** "Section 5 of this act expires July 1, 2004." [1997 c 156 § 12.]

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

**Expiration of RCW 82.60.030 and 82.60.040:** See RCW 82.60.050.

**Severability—1986 c 116:** See RCW 82.62.900.

## Chapter 82.62

TAX CREDITS FOR ELIGIBLE BUSINESS  
PROJECTS

## Sections

82.62.030 Allowance of tax credits—Limitations.

82.62.040 Repealed.

**82.62.030 Allowance of tax credits—Limitations.** (1) A person shall be allowed a credit against the tax due under chapter 82.04 RCW as provided in this section. For an application approved before January 1, 1996, the credit shall equal one thousand dollars for each qualified employment position directly created in an eligible business project. For an application approved on or after January 1, 1996, the credit shall equal two thousand dollars for each qualified employment position directly created in an eligible business project. For an application approved on or after July 1, 1997, the credit shall equal four thousand dollars for each qualified employment position with wages and benefits greater than forty thousand dollars annually that is directly created in an eligible business. For an application approved on or after July 1, 1997, the credit shall equal two thousand dollars for each qualified employment position with wages

and benefits less than or equal to forty thousand dollars annually that is directly created in an eligible business.

(2) The department shall keep a running total of all credits granted under this chapter during each fiscal year. The department shall not allow any credits which would cause the tabulation to exceed five million five hundred thousand dollars in fiscal year 1998 or 1999 or seven million five hundred thousand dollars in any fiscal year thereafter. If all or part of an application for credit is disallowed under this subsection, the disallowed portion shall be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the tabulation for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

(3) No recipient may use the tax credits to decertify a union or to displace existing jobs in any community in the state.

(4) No recipient may receive a tax credit on taxes which have not been paid during the taxable year. [1997 c 366 § 5; 1996 c 1 § 3; 1986 c 116 § 17.]

**Intent—Goals—Severability—Captions and part headings not law—1997 c 366:** See notes following RCW 82.14.370.

**Effective date—1996 c 1:** See note following RCW 82.04.255.

**82.62.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Title 83

## ESTATE TAXATION

## Chapters

83.100 Estate and transfer tax act.

## Chapter 83.100

## ESTATE AND TRANSFER TAX ACT

## Sections

83.100.070 Interest on amount due—Penalty for late filing—  
Exception—Rules.

83.100.130 Refund for overpayment—Interest.

**83.100.070 Interest on amount due—Penalty for late filing—Exception—Rules.** (1) Any tax due under this chapter which is not paid by the due date under RCW 83.100.060(1) shall bear interest at the rate of twelve percent per annum from the date the tax is due until the date of payment.

(2) Interest imposed under this section for periods after January 1, 1997, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year.

(3) If the Washington return is not filed when due under RCW 83.100.050, then the person required to file the federal return shall pay, in addition to interest, a penalty equal to five percent of the tax due for each month after the date the return is due until filed. No penalty may exceed twenty-five percent of the tax due. If the department finds that a return due under this chapter has not been filed by the due date,

and the delinquency was the result of circumstances beyond the control of the responsible person, the department shall waive or cancel any penalties imposed under this chapter with respect to the filing of such a tax return. The department shall adopt rules for the waiver or cancellation of the penalties imposed by this section. [1997 c 136 § 1; 1996 c 149 § 13; 1988 c 64 § 8; 1981 2nd ex.s. c 7 § 83.100.070 (Initiative Measure No. 402, approved November 3, 1981).]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**83.100.130 Refund for overpayment—Interest.** (1) Whenever the department determines that a person required to file the federal return has overpaid the tax due under this chapter, the department shall refund the amount of the overpayment, together with interest at the then existing rate under RCW 83.100.070(1). If the application for refund, with supporting documents, is filed within four months after an adjustment or final determination of federal tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after four months after the adjustment or final determination, the department shall pay interest only until the end of the four-month period.

(2) Interest refunded under this section for periods after January 1, 1997, through December 31, 1998, shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2) less one percentage point. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). Interest shall be refunded from the date of overpayment until the date the refund is mailed. The rate so computed shall be adjusted on the first day of January of each year. [1997 c 157 § 6; 1996 c 149 § 14; 1988 c 64 § 12; 1981 2nd ex.s. c 7 § 83.100.130 (Initiative Measure No. 402, approved November 3, 1981).]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

## Title 84 PROPERTY TAXES

### Chapters

- 84.04** Definitions.
- 84.08** General powers and duties of department of revenue.
- 84.12** Assessment and taxation of public utilities.
- 84.14** New and rehabilitated multiple-unit dwellings in urban centers.
- 84.16** Assessment and taxation of private car companies.
- 84.33** Timber and forest lands.
- 84.34** Open space, agricultural, timber lands—  
Current use—Conservation futures.
- 84.36** Exemptions.
- 84.38** Deferral of special assessments and/or property taxes.
- 84.40** Listing of property.
- 84.41** Revaluation of property.
- 84.48** Equalization of assessments.

- 84.52** Levy of taxes.
- 84.55** Limitations upon regular property taxes.
- 84.56** Collection of taxes.
- 84.64** Lien foreclosure.
- 84.69** Refunds.
- 84.70** Destroyed property—Abatement or refund.

### Chapter 84.04

#### DEFINITIONS

##### Sections

- 84.04.018 "Appraised value of property." (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.04.030 "Assessed value of property." (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

**84.04.018 "Appraised value of property."** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) "Appraised value of property" means the aggregate true and fair value of the property as last determined by the county assessor according to the revaluation program approved under chapter 84.41 RCW, including revaluations based on statistical data between physical inspections. [1997 c 3 § 101.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**84.04.030 "Assessed value of property."** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) "Assessed value of property" shall be held and construed to mean the aggregate valuation of the property subject to taxation by any taxing district as determined under RCW 84.40.0305, reduced by the value of any applicable exemptions under RCW 84.36.381 or other law, and placed on the last completed and balanced tax rolls of the county preceding the date of any tax levy. [1997 c 3 § 102; 1961 c 15 § 84.04.030. Prior: (i) 1925 ex.s. c 130 § 3; RRS § 11107. (ii) 1919 c 142 § 1, part; RRS § 11226, part.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

### Chapter 84.08

#### GENERAL POWERS AND DUTIES OF DEPARTMENT OF REVENUE

##### Sections

- 84.08.115 Department to prepare explanation of property tax system. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.08.210 Confidentiality and privilege of tax information—  
Exceptions—Penalty.

**84.08.115 Department to prepare explanation of property tax system.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) (1) The department shall

prepare a clear and succinct explanation of the property tax system, including but not limited to:

(a) The standard of true and fair value as the basis of the property tax.

(b) How the assessed value for particular parcels is determined.

(c) The procedures and timing of the assessment process.

(d) How district levy rates are determined, including the limit under chapter 84.55 RCW.

(e) How the composite tax rate is determined.

(f) How the amount of tax is calculated.

(g) How a taxpayer may appeal an assessment, and what issues are appropriate as a basis of appeal.

(h) A summary of tax exemption and relief programs, along with the eligibility standards and application processes.

(2) Each county assessor shall provide copies of the explanation to taxpayers on request, free of charge. Each revaluation notice shall include information regarding the availability of the explanation. [1997 c 3 § 207; 1991 c 218 § 2.]

**Intent—1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Effective date—1991 c 218:** See note following RCW 36.21.015.

**84.08.210 Confidentiality and privilege of tax information—Exceptions—Penalty.** (1) For purposes of this section, "tax information" means confidential income data and proprietary business information obtained by the department in the course of carrying out the duties now or hereafter imposed upon it in this title that has been communicated in confidence in connection with the assessment of property and that has not been publicly disseminated by the taxpayer, the disclosure of which would be either highly offensive to a reasonable person and not a legitimate concern to the public or would result in an unfair competitive disadvantage to the taxpayer.

(2) Tax information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose tax information.

(3) Subsection (2) of this section, however, does not prohibit the department from:

(a) Disclosing tax information to any county assessor or county treasurer;

(b) Disclosing tax information in a civil or criminal judicial proceeding or an administrative proceeding in respect to taxes or penalties imposed under this title or Title 82 RCW or in respect to assessment or valuation for tax purposes of the property to which the information or facts relate;

(c) Disclosing tax information with the written permission of the taxpayer;

(d) Disclosing tax information to the proper officer of the tax department of any state responsible for the imposition or collection of property taxes, or for the valuation of property for tax purposes, if the other state grants substantially similar privileges to the proper officers of this state;

(e) Disclosing tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under

chapter 42.17 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(f) Disclosing tax information to a peace officer as defined in RCW 9A.04.110 or county prosecutor, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecutor who receives the tax information may disclose the tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the tax information originally was sought; or

(g) Disclosing information otherwise available under chapter 42.17 RCW.

(4) A violation of this section constitutes a gross misdemeanor. [1997 c 239 § 1.]

## Chapter 84.12

### ASSESSMENT AND TAXATION OF PUBLIC UTILITIES

#### Sections

- 84.12.270 Annual assessment—Sources of information. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.12.280 Classification of real and personal property. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.12.310 Deduction of nonoperating property. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.12.330 Assessment roll—Notice of valuation. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.12.350 Apportionment of value by department of revenue. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.12.360 Basis of apportionment. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

**84.12.270 Annual assessment—Sources of information.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) The department of revenue shall annually make an assessment of the operating property of all companies; and between the fifteenth day of March and the first day of July of each of said years shall prepare an assessment roll upon which it shall enter the assessed value of all the operating property of each of such companies as of the first day of January of the year in which the assessment is made. For the purpose of determining the assessed value of such property the department of revenue may inspect the property belonging to said companies and may take into consideration any information or knowledge obtained by it from such examination and inspection of such property, or of the books, records and accounts of such companies, the statements filed as required by this chapter, the reports, statements or returns of such companies filed in the office of any board, office or commission of this state or any county thereof, the earnings and earning power of such companies,

the franchises owned or used by such companies, the assessed valuation of any and all property of such companies, whether operating or nonoperating property, and whether situated within or outside the state, and any other facts, evidence or information that may be obtainable bearing upon the value of the operating property: PROVIDED, That in no event shall any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character and assessed value of the operating property of such company. [1997 c 3 § 113; 1994 c 301 § 20; 1975 1st ex.s. c 278 § 165; 1961 c 15 § 84.12.270. Prior: 1939 c 206 § 19; 1935 c 123 § 7; 1925 ex.s. c 130 § 43; 1907 c 131 § 8; 1907 c 78 § 7; 1891 c 140 §§ 28-31; 1890 p 541 §§ 26-33; RRS § 11156-7. Formerly RCW 84.12.040.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**84.12.280 Classification of real and personal property.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) (1) In making the assessment of the operating property of any railroad or logging railroad company and in the apportionment of the values and the taxation thereof, all land occupied and claimed exclusively as the right-of-way for railroads, with all the tracks and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round houses, machine shops, or other buildings belonging to the company, used in the operation thereof, without separating the same into land and improvements, shall be assessed as real property. And the rolling stock and other movable property belonging to any railroad or logging railroad company shall be considered as personal property and taxed as such: PROVIDED, That all of the operating property of street railway companies shall be assessed and taxed as personal property.

(2) All of the operating property of airplane companies, telegraph companies, pipe line companies, water companies and toll bridge companies; the floating equipment of steamboat companies, and all of the operating property other than lands and buildings of electric light and power companies, telephone companies, gas companies and heating companies shall be assessed and taxed as personal property.

(3) Notwithstanding subsections (1) and (2) of this section, the limit provided under RCW 84.40.0305 shall be applied in the assessment of property under this section to the same extent as that limit is generally applied to property not assessed under this chapter. [1997 c 3 § 114; 1987 c 153 § 2; 1961 c 15 § 84.12.280. Prior: 1935 c 123 § 8; 1925 ex.s. c 130 § 44; 1907 c 78 § 8; 1891 c 140 §§ 28-31; 1890 p 541 §§ 26-33; RRS § 11156-8. Formerly RCW 84.12.050.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**84.12.310 Deduction of nonoperating property.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general*

*election.*) For the purpose of determining the system value of the operating property of any such company, the department of revenue shall deduct from the assessed value of the total assets of such company, the assessed value of all nonoperating property owned by such company. For such purpose the department of revenue may require of the assessors of the various counties within this state a detailed list of such company's properties assessed by them, together with the assessable or assessed value thereof: PROVIDED, That such assessed or assessable value shall be advisory only and not conclusive on the department of revenue as to the value thereof. [1997 c 3 § 115; 1994 c 301 § 21; 1975 1st ex.s. c 278 § 167; 1961 c 15 § 84.12.310. Prior: 1935 c 123 § 10; RRS § 11156-10. Formerly RCW 84.12.070.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**84.12.330 Assessment roll—Notice of valuation.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) Upon the assessment roll shall be placed after the name of each company a general description of the operating property of the company, which shall be considered sufficient if described in the language of RCW 84.12.200(13), as applied to the company, following which shall be entered the assessed value of the operating property as determined by the department of revenue. No assessment shall be invalidated by reason of a mistake in the name of the company assessed, or the omission of the name of the owner or by the entry as owner of a name other than that of the true owner. When the department of revenue shall have prepared the assessment roll and entered thereon the assessed value of the operating property of the company, as herein required, it shall notify the company by mail of the valuation determined by it and entered upon the roll. [1997 c 3 § 116; 1994 c 301 § 22; 1975 1st ex.s. c 278 § 168; 1961 c 15 § 84.12.330. Prior: 1935 c 123 § 12; 1925 ex.s. c 130 § 44; 1907 c 78 § 8; 1891 c 140 § 35; 1890 p 543 § 35; RRS § 11156-12. Formerly RCW 84.12.110.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**84.12.350 Apportionment of value by department of revenue.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) Upon determination by the department of revenue of the assessed value of the property appearing on such rolls it shall apportion such value to the respective counties entitled thereto, as hereinafter provided, and shall determine the equalized assessed valuation of such property in each such county and in the several taxing districts therein, by applying to such actual apportioned value the same ratio as the ratio of assessed to the correct assessed value of the general property in such county: PROVIDED, That, whenever the amount of the true and correct assessed value of the operating property of any company otherwise apportionable to any county or other taxing district shall be less than two hundred fifty dollars, such amount need not be

apportioned to such county or taxing district but may be added to the amount apportioned to an adjacent county or taxing district. [1997 c 3 § 117; 1994 c 301 § 23; 1967 ex.s. c 26 § 17; 1961 c 15 § 84.12.350. Prior: 1939 c 206 § 21; 1935 c 123 § 14; RRS § 11156-14. Formerly RCW 84.12.140.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

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

**84.12.360 Basis of apportionment. (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)** The value of the operating property assessed to a company, as fixed and determined by the department of revenue, shall be apportioned by the department of revenue to the respective counties and to the taxing districts thereof wherein such property is located in the following manner:

(1) Property of all railroad companies other than street railroad companies, telegraph companies and pipe line companies—upon the basis of that proportion of the value of the total operating property within the state which the mileage of track, as classified by the department of revenue (in case of railroads), mileage of wire (in the case of telegraph companies), and mileage of pipe line (in the case of pipe line companies) within each county or taxing district bears to the total mileage thereof within the state, at the end of the calendar year last past. For the purpose of such apportionment the department may classify railroad track.

(2) Property of street railroad companies, telephone companies, electric light and power companies, gas companies, water companies, heating companies and toll bridge companies—upon the basis of relative value of the operating property within each county and taxing district to the value of the total operating property within the state to be determined by such factors as the department of revenue shall deem proper.

(3) Planes or other aircraft of airplane companies and watercraft of steamboat companies—upon the basis of such factor or factors of allocation, to be determined by the department of revenue, as will secure a substantially fair and equitable division between counties and other taxing districts.

All other property of airplane companies and steamboat companies—upon the basis set forth in subsection (2) of this section.

The basis of apportionment with reference to all public utility companies above prescribed shall not be deemed exclusive and the department of revenue in apportioning values of such companies may also take into consideration such other information, facts, circumstances, or allocation factors as will enable it to make a substantially just and correct valuation of the operating property of such companies within the state and within each county thereof. [1997 c 3 § 118; 1994 c 301 § 24; 1987 c 153 § 3; 1975 1st ex.s. c 278 § 170; 1961 c 15 § 84.12.360. Prior: 1955 c 120 § 1; 1935 c 123 § 15; 1925 ex.s. c 130 § 47; 1917 c 25 § 1; 1907 c 78 § 11; 1891 c 140 § 33; 1890 p 541 § 30; RRS § 11156-15. Formerly RCW 84.12.150.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

## Chapter 84.14

### NEW AND REHABILITATED MULTIPLE-UNIT DWELLINGS IN URBAN CENTERS

#### Sections

|           |                           |
|-----------|---------------------------|
| 84.14.010 | Definitions.              |
| 84.14.030 | Application—Requirements. |
| 84.14.050 | Application—Procedures.   |

**84.14.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "City" means either (a) a city or town with a population of at least one hundred thousand or (b) the largest city or town, if there is no city or town with a population of at least one hundred thousand, located in a county planning under the growth management act.

(2) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which an exemption may be applied for under this chapter.

(3) "Growth management act" means chapter 36.70A RCW.

(4) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(5) "Owner" means the property owner of record.

(6) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental accommodation that is leased for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(7) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multifamily housing units.

(8) "Residential targeted area" means an area within an urban center that has been designated by the governing authority as a residential targeted area in accordance with this chapter.

(9) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

(10) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use. [1997 c 429 § 40; 1995 c 375 § 3.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**84.14.030 Application—Requirements.** An owner of property making application under this chapter must meet the following requirements:

(1) The new or rehabilitated multiple-unit housing must be located in a residential targeted area as designated by the city;

(2) The multiple-unit housing must meet the guidelines as adopted by the governing authority that may include height, density, public benefit features, number and size of proposed development, parking, low-income or moderate-income occupancy requirements, and other adopted requirements indicated necessary by the city. The required amenities should be relative to the size of the project and tax benefit to be obtained;

(3) The new, converted, or rehabilitated multiple-unit housing must provide for a minimum of fifty percent of the space for permanent residential occupancy. In the case of existing occupied multifamily development, the multifamily housing must also provide for a minimum of four additional multifamily units. Existing multifamily vacant housing that has been vacant for twelve months or more does not have to provide additional multifamily units;

(4) New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application;

(5) Property proposed to be rehabilitated must be vacant at least twelve months before submitting an application and fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995; and

(6) The applicant must enter into a contract with the city approved by the governing body under which the applicant has agreed to the implementation of the development on terms and conditions satisfactory to the governing authority. [1997 c 429 § 42; 1995 c 375 § 6.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**84.14.050 Application—Procedures.** An owner of property seeking tax incentives under this chapter must complete the following procedures:

(1) In the case of rehabilitation or where demolition or new construction is required, the owner shall secure from the governing authority or duly authorized agent, before commencement of rehabilitation improvements or new construction, verification of property noncompliance with applicable building and housing codes;

(2) In the case of new and rehabilitated multifamily housing, the owner shall apply to the city on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested exemption including information indicated on the application form or in the guidelines;

(b) A description of the project and site plan, including the floor plan of units and other information requested;

(c) A statement that the applicant is aware of the potential tax liability involved when the property ceases to be eligible for the incentive provided under this chapter;

(3) The applicant must verify the application by oath or affirmation; and

(4) The application must be made on or before April 1 of each year, and must be accompanied by the application fee, if any, required under RCW 84.14.080. The governing authority may permit the applicant to revise an application before final action by the governing authority. [1997 c 429 § 43; 1995 c 375 § 8.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

## Chapter 84.16

### ASSESSMENT AND TAXATION OF PRIVATE CAR COMPANIES

#### Sections

- 84.16.040 Annual assessment—Sources of information. *(Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)*
- 84.16.050 Basis of valuation—Apportionment of system value to state. *(Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)*
- 84.16.090 Assessment roll—Notice of valuation. *(Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)*
- 84.16.110 Apportionment of value to counties by department of revenue. *(Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)*
- 84.16.120 Basis of apportionment. *(Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)*

**84.16.040 Annual assessment—Sources of information.** *(Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)* The department of revenue shall annually make an assessment of the operating property of each private car company; and between the first day of May and the first day of July of each of said years shall prepare an assessment roll upon which it shall enter the assessed value of all the operating property of each of such companies as of the first day of January of the year in which the assessment is made. For the purpose of determining the assessed value of such property the department of revenue may take into consideration any information or knowledge obtained by it from an examination and inspection of such property, or of the books, records and accounts of such companies, the statements filed as required by this chapter, the reports, statements or returns of such companies filed in the office of any board, office or commission of this state or any county thereof, the earnings and earning power of such companies, the franchises owned or used by such companies, the assessed valuation of any and all property of such companies, whether operating property or nonoperating property, and whether situated within or without the state, and any other facts, evidences or information that may be obtainable bearing upon the value of the operating property: PROVIDED, That in no event shall any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character and assessed value of the operating property of such company. [1997 c 3 § 119; 1994 c 301 § 26; 1975 1st ex.s. c 278 § 179; 1961 c 15 § 84.16.040. Prior: 1939 c 206 § 22; 1933 c 146 § 7; RRS § 11172-7; prior: 1907 c 36 § 7.]



**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**84.16.050 Basis of valuation—Apportionment of system value to state.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) The department of revenue may, in determining the assessed value of the operating property to be placed on the assessment roll value the entire property as a unit. If the company owns, leases, operates or uses property partly within and partly without the state, the department of revenue may determine the value of the operating property within this state by the proportion that the value of such property bears to the value of the entire operating property of the company, both within and without this state. In determining the operating property which is located within this state the department of revenue may consider and base such determination on the proportion which the number of car miles of the various classes of cars made in this state bears to the total number of car miles made by the same cars within and without this state, or to the total number of car miles made by all cars of the various classes within and without this state. If the value of the operating property of the company cannot be fairly determined in such manner the department of revenue may use any other reasonable and fair method to determine the value of the operating property of the company within this state. [1997 c 3 § 120; 1994 c 301 § 27; 1975 1st ex.s. c 278 § 180; 1961 c 15 § 84.16.050. Prior: 1933 c 146 § 8; RRS § 11172-8; prior: 1907 c 36 § 7.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**84.16.090 Assessment roll—Notice of valuation.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) Upon the assessment roll shall be placed after the name of each company a general description of the operating property of the company, which shall be considered sufficient if described in the language of RCW 84.16.010(3) or otherwise, following which shall be entered the assessed value of the operating property as determined by the department of revenue. No assessment shall be invalid by a mistake in the name of the company assessed, by omission of the name of the owner or by the entry of a name other than that of the true owner. When the department of revenue shall have prepared the assessment roll and entered thereon the assessed value of the operating property of the company, as required, it shall notify the company by mail of the valuation determined by it and entered upon the roll; and thereupon such assessed valuation shall become the assessed value of the operating property of the company, subject to revision or correction by the department of revenue as hereinafter provided; and shall be the valuation upon which, after equalization by the department of revenue as hereinafter provided, the taxes of such company shall be based and computed. [1997 c 3 § 121; 1994 c 301 § 28; 1975 1st ex.s.

c 278 § 181; 1961 c 15 § 84.16.090. Prior: 1933 c 146 § 9; RRS § 11172-9; prior: 1907 c 36 § 4.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**84.16.110 Apportionment of value to counties by department of revenue.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) Upon determination by the department of revenue of the true and correct assessed value of the property appearing on such rolls the department shall apportion such value to the respective counties entitled thereto as hereinafter provided, and shall determine the equalized or assessed valuation of such property in such counties by applying to such actual apportioned value the same ratio as the ratio of assessed to the correct assessed value of the general property of the respective counties: PROVIDED, That, whenever the amount of the true and correct assessed value of the operating property of any company otherwise apportionable to any county shall be less than two hundred fifty dollars, such amount need not be apportioned to such county but may be added to the amount apportioned to an adjacent county. [1997 c 3 § 122; 1994 c 301 § 29; 1967 ex.s. c 26 § 18; 1961 c 15 § 84.16.110. Prior: 1939 c 206 § 24; 1933 c 146 § 11; RRS § 11172-11.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

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

**84.16.120 Basis of apportionment.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) The assessed value of the property of each company as fixed and determined by the department of revenue as herein provided shall be apportioned to the respective counties in the following manner:

(1) If all the operating property of the company is situated entirely within a county and none of such property is located within, extends into, or through or is operated into or through any other county, the entire value thereof shall be apportioned to the county within which such property is situated, located, and operated.

(2) If the operating property of any company is situated or located within, extends into or is operated into or through more than one county, the value thereof shall be apportioned to the respective counties into or through which its cars are operated in the proportion that the length of main line track of the respective railroads moving such cars in such counties bears to the total length of main line track of such respective railroads in this state.

(3) If the property of any company is of such character that it will not be reasonable, feasible or fair to apportion the value as hereinabove provided, the value thereof shall be apportioned between the respective counties into or through which such property extends or is operated or in which the same is located in such manner as may be reasonable, feasible and fair. [1997 c 3 § 123; 1994 c 301 § 30; 1961 c 15 § 84.16.120. Prior: 1933 c 146 § 12; RRS § 11172-12; prior: 1907 c 36 § 7.]

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

Chapter 84.33

TIMBER AND FOREST LANDS

Sections

- 84.33.0501 Purchaser of privately owned timber—Report. (*Expires July 1, 2000.*)
- 84.33.120 Forest land valuation—Assessor to list forest land at grade and class values—Computation of assessed value—Adjustment of values—Certification—Use—Notice of continuance—Appeals—Removal of classification—Compensating tax.
- 84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.
- 84.33.145 Compensating tax—Deferral upon application for classification under RCW 84.34.020—Computation of tax—Exemption.

**84.33.0501 Purchaser of privately owned timber—Report. (*Expires July 1, 2000.*)** (1) A purchaser of privately owned timber in an amount in excess of two hundred thousand board feet in a voluntary sale made in the ordinary course of business shall, on or before the last day of the month following the purchase of the timber, report the particulars of the purchase to the department.

(2) The report required in subsection (1) of this section shall contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name and address, sale date, termination date in sale agreement, total sale price, total acreage involved in the sale, net volume of timber purchased, legal description of the area involved in the sale, road construction or improvements required or completed, timber cruise data, and timber thinning data. A report may be submitted in any reasonable form or, at the purchaser's option, by submitting relevant excerpts of the timber sales contract. A purchaser may comply by submitting the information in the following form:

Purchaser's name: . . . . .  
 Purchaser's address: . . . . .  
 Sale date: . . . . .  
 Termination date: . . . . .  
 Total sale price: . . . . .  
 Total acreage involved: . . . . .  
 Net volume of timber purchased: . . . . .  
 Legal description of sale area: . . . . .  
 Property improvements: . . . . .  
 Timber cruise data: . . . . .  
 Timber thinning data: . . . . .

(3) A purchaser of privately owned timber involved in a purchase described in subsection (1) of this section who fails to report a purchase as required may be liable for a penalty of two hundred fifty dollars for each failure to report, as determined by the department.

(4) This section shall expire July 1, 2000. [1997 c 151 § 1; 1994 c 229 § 1.]

**Effective date—1997 c 151:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 1997]." [1997 c 151 § 2.]

**84.33.120 Forest land valuation—Assessor to list forest land at grade and class values—Computation of assessed value—Adjustment of values—Certification—Use—Notice of continuance—Appeals—Removal of classification—Compensating tax.** (1) In preparing the assessment rolls as of January 1, 1982, for taxes payable in 1983 and each January 1st thereafter, the assessor shall list each parcel of forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (2) of this section and shall compute the assessed value of the land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. Values for the several grades of bare forest land shall be as follows.

| LAND GRADE | OPERABILITY CLASS | VALUES PER ACRE |
|------------|-------------------|-----------------|
| 1          | 1                 | \$141           |
|            | 2                 | 136             |
|            | 3                 | 131             |
|            | 4                 | 95              |
| 2          | 1                 | 118             |
|            | 2                 | 114             |
|            | 3                 | 110             |
|            | 4                 | 80              |
| 3          | 1                 | 93              |
|            | 2                 | 90              |
|            | 3                 | 87              |
|            | 4                 | 66              |
| 4          | 1                 | 70              |
|            | 2                 | 68              |
|            | 3                 | 66              |
|            | 4                 | 52              |
| 5          | 1                 | 51              |
|            | 2                 | 48              |
|            | 3                 | 46              |
|            | 4                 | 31              |
| 6          | 1                 | 26              |
|            | 2                 | 25              |
|            | 3                 | 25              |
|            | 4                 | 23              |
| 7          | 1                 | 12              |
|            | 2                 | 12              |
|            | 3                 | 11              |
|            | 4                 | 11              |
| 8          |                   | 1               |

(2) On or before December 31, 1981, the department shall adjust, by rule under chapter 34.05 RCW, the forest land values contained in subsection (1) of this section in accordance with this subsection, and shall certify these adjusted values to the county assessor for his or her use in preparing the assessment rolls as of January 1, 1982. For

the adjustment to be made on or before December 31, 1981, for use in the 1982 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1976, and June 30, 1981, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1975, and June 30, 1980, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 82.04.291 and 84.33.071; and

(c) Adjust the forest land values contained in subsection (1) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

For the adjustments to be made on or before December 31, 1982, and each succeeding year thereafter, the same procedure shall be followed as described in this subsection utilizing harvester excise tax returns filed under RCW 82.04.291 and this chapter except that this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(3) In preparing the assessment roll for 1972 and each year thereafter, the assessor shall enter as the true and fair value of each parcel of forest land the appropriate grade value certified to him or her by the department of revenue, and he or she shall compute the assessed value of such land by using the same assessment ratio he or she applies generally in computing the assessed value of other property in his or her county. In preparing the assessment roll for 1975 and each year thereafter, the assessor shall assess and value as classified forest land all forest land that is not then designated pursuant to RCW 84.33.120(4) or 84.33.130 and shall make a notation of such classification upon the assessment and tax rolls. On or before January 15 of the first year in which such notation is made, the assessor shall mail notice by certified mail to the owner that such land has been classified as forest land and is subject to the compensating tax imposed by this section. If the owner desires not to have such land assessed and valued as classified forest land, he or she shall give the assessor written notice thereof on or before March 31 of such year and the assessor shall remove from the assessment and tax rolls the classification notation entered pursuant to this subsection, and shall thereafter assess and value such land in the manner provided by law other than this chapter 84.33 RCW.

(4) In any year commencing with 1972, an owner of land which is assessed and valued by the assessor other than pursuant to the procedures set forth in RCW 84.33.110 and this section, and which has, in the immediately preceding year, been assessed and valued by the assessor as forest land, may appeal to the county board of equalization by filing an application with the board in the manner prescribed in subsection (2) of RCW 84.33.130. The county board shall afford the applicant an opportunity to be heard if the application so requests and shall act upon the application in the manner prescribed in subsection (3) of RCW 84.33.130.

(5) Land that has been assessed and valued as classified forest land as of any year commencing with 1975 assessment

year or earlier shall continue to be so assessed and valued until removal of classification by the assessor only upon the occurrence of one of the following events:

(a) Receipt of notice from the owner to remove such land from classification as forest land;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that, because of actions taken by the owner, such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from classification if a governmental agency, organization, or other recipient identified in subsection (9) or (10) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in classified forest land by means of a transaction that qualifies for an exemption under subsection (9) or (10) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the classified land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(d) Determination that a higher and better use exists for such land than growing and harvesting timber after giving the owner written notice and an opportunity to be heard;

(e) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (7) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of classified forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (7) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals.

The assessor shall remove classification pursuant to (c) or (d) of this subsection prior to September 30 of the year prior to the assessment year for which termination of classification is to be effective. Removal of classification as forest land upon occurrence of (a), (b), (d), or (e) of this subsection shall apply only to the land affected, and upon occurrence of (c) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber: PROVIDED, That any remaining classified forest land meets necessary definitions of forest land pursuant to RCW 84.33.100.

(6) Within thirty days after such removal of classification as forest land, the assessor shall notify the owner in

writing setting forth the reasons for such removal. The owner of such land shall thereupon have the right to apply for designation of such land as forest land pursuant to subsection (4) of this section or RCW 84.33.130. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(7) Unless the owner successfully applies for designation of such land or unless the removal is reversed on appeal, notation of removal from classification shall immediately be made upon the assessment and tax rolls, and commencing on January 1 of the year following the year in which the assessor made such notation, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (5)(e), (9), or (10) of this section and unless the assessor shall not have mailed notice of classification pursuant to subsection (3) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years, commencing with assessment year 1975, for which such land was assessed and valued as forest land.

(8) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from classification as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(9) The compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130,

exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (7) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes; or

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of such land.

(10) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (7) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (5) of this section resulted solely from:

(a) An action described in subsection (9) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner.

(11) With respect to any land that has been designated prior to May 6, 1974, pursuant to RCW 84.33.120(4) or 84.33.130, the assessor may, prior to January 1, 1975, on his or her own motion or pursuant to petition by the owner, change, without imposition of the compensating tax provided under RCW 84.33.140, the status of such designated land to classified forest land. [1997 c 299 § 1; 1995 c 330 § 1; 1992 c 69 § 1; 1986 c 238 § 1; 1984 c 204 § 23; 1981 c 148 § 7; 1980 c 134 § 2; 1974 ex.s. c 187 § 5; 1972 ex.s. c 148 § 5; 1971 ex.s. c 294 § 12.]

**Effective date—1997 c 299:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 1997]." [1997 c 299 § 4.]

**Effective date—1995 c 330:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 330 § 3.]

**Effective date—1992 c 69:** See RCW 84.34.923.

**Savings—Effective date—1984 c 204:** See notes following RCW 84.33.035.

**Purpose—Severability—Effective dates—1981 c 148:** See notes following RCW 84.33.110.

**Severability—1974 ex.s. c 187:** See note following RCW 84.33.110.

**84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.** (1) When land has been designated as forest land pursuant to RCW 84.33.120(4) or 84.33.130, a notation of such designation shall be made each year upon the assessment and tax rolls, a copy of the notice of approval together with the legal description or assessor's tax lot numbers for such land shall, at the expense of the applicant, be filed by

the assessor in the same manner as deeds are recorded, and such land shall be graded and valued pursuant to RCW 84.33.110 and 84.33.120 until removal of such designation by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove such designation;

(b) Sale or transfer to an ownership making such land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of such land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of classification. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department of revenue. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated pursuant to subsection (3) of this section shall become due and payable by the seller or transferor at time of sale. The county auditor shall not accept an instrument of conveyance of designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (3) of this section to the county board of equalization. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) Such land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (5) or (6) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in designated forest land by means of a transaction that qualifies for an exemption under subsection (5) or (6) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or any applicable regulations thereunder; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

Removal of designation upon occurrence of any of (a) through (c) of this subsection shall apply only to the land affected, and upon occurrence of (d) of this subsection shall apply only to the actual area of land no longer primarily devoted to and used for growing and harvesting timber, without regard to other land that may have been included in the same application and approval for designation: PRO-

VIDED, That any remaining designated forest land meets necessary definitions of forest land pursuant to RCW 84.33.100.

(2) Within thirty days after such removal of designation of forest land, the assessor shall notify the owner in writing, setting forth the reasons for such removal. The seller, transferor, or owner may appeal such removal to the county board of equalization.

(3) Unless the removal is reversed on appeal a copy of the notice of removal with notation of the action, if any, upon appeal, together with the legal description or assessor's tax lot numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded, and commencing on January 1 of the year following the year in which the assessor mailed such notice, such land shall be assessed on the same basis as real property is assessed generally in that county. Except as provided in subsection (1)(c), (5), or (6) of this section, a compensating tax shall be imposed which shall be due and payable to the county treasurer thirty days after the owner is notified of the amount of the compensating tax. As soon as possible, the assessor shall compute the amount of such compensating tax and mail notice to the owner of the amount thereof and the date on which payment is due. The amount of such compensating tax shall be equal to the difference between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land multiplied by the dollar rate of the last levy extended against such land, multiplied by a number, in no event greater than ten, equal to the number of years for which such land was designated as forest land.

(4) Compensating tax, together with applicable interest thereon, shall become a lien on such land which shall attach at the time such land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which such land may become charged or liable. Such lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(5) The compensating tax specified in subsection (3) of this section shall not be imposed if the removal of designation pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands

recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW: PROVIDED, That at such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (3) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes; or

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of such land.

(6) In a county with a population of more than one million inhabitants, the compensating tax specified in subsection (3) of this section shall not be imposed if the removal of classification as forest land pursuant to subsection (1) of this section resulted solely from:

(a) An action described in subsection (5) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner. [1997 c 299 § 2; 1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

**Effective date—1997 c 299:** See note following RCW 84.33.120.

**Effective date—1995 c 330:** See note following RCW 84.33.120.

**Effective date—1992 c 69:** See RCW 84.34.923.

**Purpose—Severability—Effective dates—1981 c 148:** See notes following RCW 84.33.110.

**Severability—1974 ex.s. c 187:** See note following RCW 84.33.110.

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

#### **84.33.145 Compensating tax—Deferral upon application for classification under RCW 84.34.020—**

**Computation of tax—Exemption.** (1) If no later than thirty days after removal of classification or designation the owner applies for classification under RCW 84.34.020 (1), (2), or (3), then the classified or designated forest land shall not be considered removed from classification or designation for purposes of the compensating tax under RCW 84.33.120 or 84.33.140 until the application for current use classification under RCW 84.34.030 is denied or the property is removed from designation under RCW 84.34.108. Upon removal from designation under RCW 84.34.108, the amount of compensating tax due under this chapter shall be equal to:

(a) The difference, if any, between the amount of tax last levied on such land as forest land and an amount equal to the new assessed valuation of such land when removed from designation under RCW 84.34.108 multiplied by the dollar rate of the last levy extended against such land, multiplied by

(b) A number equal to:

(i) The number of years the land was classified or designated under this chapter, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was classified or designated under this chapter and classified under chapter 84.34 RCW is at least ten.

(2) Nothing in this section authorizes the continued classification or designation under this chapter or defers or reduces the compensating tax imposed upon forest land not transferred to classification under subsection (1) of this section which does not meet the necessary definitions of forest land under RCW 84.33.100. Nothing in this section affects the additional tax imposed under RCW 84.34.108.

(3) In a county with a population of more than one million inhabitants, no amount of compensating tax is due under this section if the removal from classification under RCW 84.34.108 results from a transfer of property described in RCW 84.34.108(5). [1997 c 299 § 3; 1992 c 69 § 3; 1986 c 315 § 3.]

**Effective date—1997 c 299:** See note following RCW 84.33.120.

**Effective date—1992 c 69:** See RCW 84.34.923.

### **Chapter 84.34**

#### **OPEN SPACE, AGRICULTURAL, TIMBER LANDS—CURRENT USE—CONSERVATION FUTURES**

##### Sections

84.34.020 Definitions.

84.34.060 Determination of true and fair value of classified land—  
Computation of assessed value.

84.34.065 Determination of true and fair value of farm and agricultural  
land—Computation—Definitions.

**84.34.020 Definitions.** As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(i) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

Parcels of land described in (b)(i) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)(ii) and (c)(ii) of this subsection.

Agricultural lands shall also include such incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands";

(d) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes;

(e) Any parcel of land designated as agricultural land under RCW 36.70A.170; or

(f) Any parcel of land not within an urban growth area zoned as agricultural land under a comprehensive plan adopted under chapter 36.70A RCW.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of forest crops for commercial purposes. A timber management plan shall be filed with the county legislative authority at the time (a) an application is made for classification as timber land pursuant to this chapter or (b) when a sale or transfer of timber land occurs and a notice of classification continuance is signed. Timber land means the land only.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" shall mean the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, shall be considered contiguous.

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture. [1997 c 429 § 31; 1992 c 69 § 4; 1988 c 253 § 3; 1983 c 3 § 227; 1973 1st ex.s. c 212 § 2; 1970 ex.s. c 87 § 2.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

**84.34.060 Determination of true and fair value of classified land—Computation of assessed value.** In determining the true and fair value of open space land and timber land, which has been classified as such under the provisions of this chapter, the assessor shall consider only the use to which such property and improvements is currently applied and shall not consider potential uses of such property. The assessed valuation of open space land shall not be less than the minimum value per acre of classified farm and agricultural land except that the assessed valuation of open space land may be valued based on the public benefit rating system adopted under RCW 84.34.055: PROVIDED FURTHER, That timber land shall be valued according to chapter 84.33 RCW. In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen-space



uses within five years after the sale. [1997 c 429 § 32; 1992 c 69 § 8; 1985 c 393 § 2; 1981 c 148 § 10; 1973 1st ex.s. c 212 § 7; 1970 ex.s. c 87 § 6.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Purpose—Severability—Effective dates—1981 c 148:** See notes following RCW 84.33.110.

**84.34.065 Determination of true and fair value of farm and agricultural land—Computation—Definitions.** The true and fair value of farm and agricultural land shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. The earning or productive capacity of farm and agricultural lands shall be the "net cash rental", capitalized at a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes. The current use value of land under RCW 84.34.020(2)(d) shall be established as: The prior year's average value of open space farm and agricultural land used in the county plus the value of land improvements such as septic, water, and power used to serve the residence. This shall not be interpreted to require the assessor to list improvements to the land with the value of the land.

In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen-space uses within five years after the sale.

For the purposes of the above computation:

(1) The term "net cash rental" shall mean the average rental paid on an annual basis, in cash, for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. There shall be allowed as a deduction from the rental received or computed any costs of crop production charged against the landlord if the costs are such as are customarily paid by a landlord. If "net cash rental" data is not available, the earning or productive capacity of farm and agricultural lands shall be determined by the cash value of typical or usual crops grown on land of similar quality and similarly situated averaged over not less than five years. Standard costs of production shall be allowed as a deduction from the cash value of the crops.

The current "net cash rental" or "earning capacity" shall be determined by the assessor with the advice of the advisory committee as provided in RCW 84.34.145, and through a continuing internal study, assisted by studies of the department of revenue. This net cash rental figure as it applies to any farm and agricultural land may be challenged before the same boards or authorities as would be the case with regard to assessed values on general property.

(2) The term "rate of interest" shall mean the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar

legal instruments, averaged over the immediate past five years.

The "rate of interest" shall be determined annually by a rule adopted by the department of revenue and such rule shall be published in the state register not later than January 1 of each year for use in that assessment year. The department of revenue determination may be appealed to the state board of tax appeals within thirty days after the date of publication by any owner of farm or agricultural land or the assessor of any county containing farm and agricultural land.

(3) The "component for property taxes" shall be a figure obtained by dividing the assessed value of all property in the county into the property taxes levied within the county in the year preceding the assessment and multiplying the quotient obtained by one hundred. [1997 c 429 § 33; 1992 c 69 § 9; 1989 c 378 § 11; 1973 1st ex.s. c 212 § 10.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

## Chapter 84.36 EXEMPTIONS

### Sections

- 84.36.015 Property valued at less than five hundred dollars—Exceptions. (*Effective January 1, 1999.*)
- 84.36.037 Nonprofit organization property connected with operation of public assembly hall or meeting place.
- 84.36.041 Nonprofit homes for the aging. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.36.046 Nonprofit cancer clinic or center.
- 84.36.070 Intangible personal property—Appraisal.
- 84.36.255 Improvements to benefit fish and wildlife habitat, water quality, and water quantity—Cooperative assistance to landowners—Certification of best management practice—Limitation—Landowner claim and certification.
- 84.36.470 Agricultural products—Exemption.
- 84.36.487 Air pollution control equipment in thermal electric generation facilities—Records—Payments on cessation of operation.
- 84.36.800 Definitions.
- 84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations or corporations.
- 84.36.810 Cessation of use under which exemption granted—Collection of taxes.

**84.36.015 Property valued at less than five hundred dollars—Exceptions. (*Effective January 1, 1999.*)** (1) Each parcel of real property, and each personal property account, that has an assessed value of less than five hundred dollars is exempt from taxation.

(2) This section does not apply to personal property to which the exemption from taxation under RCW 84.36.110(2) may be applied or to real property which qualifies for preferential tax treatment under this chapter or chapter 84.14, 84.26, 84.33, or 84.34 RCW. [1997 c 244 § 1.]

**Effective date—1997 c 244:** "This act takes effect January 1, 1999." [1997 c 244 § 3.]

**84.36.037 Nonprofit organization property connected with operation of public assembly hall or meeting place.** (1) Real or personal property owned by a nonprofit organization, association, or corporation in connection with the operation of a public assembly hall or meeting place is exempt from taxation. The area exempt under this section

includes the building or buildings, the land under the buildings, and an additional area necessary for parking, not exceeding a total of one acre: PROVIDED, That for property essentially unimproved except for restroom facilities and structures on such property which has been used primarily for annual community celebration events for at least ten years, such exempt property shall not exceed twenty-nine acres.

(2) To qualify for this exemption the property must be used exclusively for public gatherings and be available to all organizations or persons desiring to use the property, but the owner may impose conditions and restrictions which are necessary for the safekeeping of the property and promote the purposes of this exemption. Membership shall not be a prerequisite for the use of the property.

(3) The use of the property for pecuniary gain or to promote business activities, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified by:

(a) The collection of rent or donations if the amount is reasonable and does not exceed maintenance and operation expenses created by the user.

(b) Fund-raising activities conducted by a nonprofit organization.

(c) The use of the property for pecuniary gain or to promote business activities for periods of not more than seven days in a year.

(d) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(4) The department of revenue shall narrowly construe this exemption. [1997 c 298 § 1; 1993 c 327 § 1; 1987 c 505 § 80; 1981 c 141 § 2.]

**Applicability, construction—1981 c 141:** See note following RCW 84.36.060.

**84.36.041 Nonprofit homes for the aging.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

(1) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents; or

(b) The home is subsidized under a federal department of housing and urban development program. The department of revenue shall provide by rule a definition of homes eligible for exemption under this subsection (b), consistent with the purposes of this section.

(2) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and the construction, rehabilitation, acquisition, or refinancing of the home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses the tax exempt bonds and the financ-

ing program requires the home to reserve a percentage of all dwelling units so financed for low-income residents. The initial term of the exemption under this subsection shall equal the term of the tax exempt bond used in connection with the financing program, or the term of the requirement to reserve dwelling units for low-income residents, whichever is shorter. If the financing program involves less than the entire home, only those dwelling units included in the financing program are eligible for total exemption. The department of revenue shall provide by rule the requirements for monitoring compliance with the provisions of this subsection and the requirements for exemption including:

(a) The number or percentage of dwelling units required to be occupied by low-income residents, and a definition of low income;

(b) The type and character of the dwelling units, whether independent units or otherwise; and

(c) Any particular requirements for continuing care retirement communities.

(3) A home for the aging is eligible for a partial exemption on the real property and a total exemption for the home's personal property if the home does not meet the requirements of subsection (1) of this section because fewer than fifty percent of the occupied dwelling units are occupied by eligible residents, as follows:

(a) A partial exemption shall be allowed for each dwelling unit in a home occupied by a resident requiring assistance with activities of daily living.

(b) A partial exemption shall be allowed for each dwelling unit in a home occupied by an eligible resident.

(c) A partial exemption shall be allowed for an area jointly used by a home for the aging and by a nonprofit organization, association, or corporation currently exempt from property taxation under one of the other provisions of this chapter. The shared area must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property taxation under one of the other provisions of this chapter, such as kitchen, dining, and laundry areas.

(d) The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, less the assessed value of any area exempt under (c) of this subsection, by a fraction. The numerator of the fraction is the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living. The denominator of the fraction is the total number of occupied dwelling units as of January 1st of the year for which exemption is claimed.

(4) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(5) A home for the aging is exempt from taxation only if the organization operating the home is exempt from income tax under section 501(c) of the federal internal revenue code as existing on January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purposes of this section.

(6) In order for the home to be eligible for exemption under subsections (1)(a) and (2)(b) of this section, each eligible resident of a home for the aging shall submit an income verification form to the county assessor by July 1st

of the assessment year in which the application for exemption is made. The income verification form shall be prescribed and furnished by the department of revenue. An eligible resident who has filed a form for a previous year need not file a new form until there is a change in status affecting the person's eligibility.

(7) In determining the assessed value of a home for the aging for purposes of the partial exemption provided by subsection (3) of this section, the assessor shall apply the computation method provided by RCW 84.34.060 and shall consider only the use to which such property is applied during the years for which such partial exemptions are available and shall not consider potential uses of such property.

(8) A home for the aging that was exempt or partially exempt for taxes levied in 1993 for collection in 1994 is partially exempt for taxes levied in 1994 for collection in 1995, has an increase in taxable value for taxes levied in 1994 for collection in 1995 due to the change prescribed by chapter 151, Laws of 1993 with respect to the numerator of the fraction used to determine the amount of a partial exemption, and is not fully exempt under this section is entitled to partial exemptions as follows:

(a) For taxes levied in 1994 for collection in 1995, the home shall pay taxes based upon the taxable value in 1993 plus one-third of the increase in the taxable value from 1993 to the nonexempt value calculated under subsection (3)(d) of this section for 1994.

(b) For taxes levied in 1995 for collection in 1996, the home shall pay taxes based upon the taxable value for 1994 as calculated in (a) of this subsection plus one-half of the increase in the taxable value from 1994 to the nonexempt value calculated under subsection (3)(d) of this section for 1995. For taxes levied in 1996 for collection in 1997 and for taxes levied thereafter, this subsection (8) does not apply, and the home shall pay taxes without reference to this subsection (8).

(c) For purposes of this subsection (8), "taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of taxes due.

(9) As used in this section:

(a) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as a principal place of residence as of January 1st of the year for which the exemption is claimed. Confinement of the person to a hospital or nursing home does not disqualify the claim of exemption if the dwelling unit is temporarily unoccupied or if the dwelling unit is occupied by a spouse, a person financially dependent on the claimant for support, or both; and

(ii) Is sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. Any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income of no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as most

recently determined by the federal department of housing and urban development for the county in which the person resides. For the purposes of determining eligibility under this section, a "cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or his or her spouse or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home. If the person submitting the income verification form was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person submitting the income verification form is reduced for two or more months of the preceding year by reason of the death of the person's spouse, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after the death of the spouse by twelve.

(c) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

(vii) Federal social security act and railroad retirement benefits;

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

(d) "Resident requiring assistance with activities of daily living" means a person who requires significant assistance with the activities of daily living and who would be at risk of nursing home placement without this assistance.

(e) "Home for the aging" means a residential housing facility that (i) provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person; (ii) has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and (iii) provides varying levels

of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(10) A for-profit home for the aging that converts to nonprofit status after June 11, 1992, and would otherwise be eligible for tax exemption under this section may not receive the tax exemption until five years have elapsed since the conversion. The exemption shall then be ratably granted over the next five years. [1997 c 3 § 124; 1993 c 151 § 1; 1992 c 213 § 1; 1991 sp.s. c 24 § 1; 1991 c 203 § 2; 1989 c 379 § 2.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Applicability—1993 c 151:** "This act shall be effective for taxes levied in 1994 for collection in 1995 and for taxes levied thereafter." [1993 c 151 § 2.]

**Applicability—1992 c 213:** "The combined disposable income threshold of twenty-two thousand dollars or less contained in section 1 of this act shall be effective for taxes levied for collection in 1993 and thereafter." [1992 c 213 § 3.]

**Severability—Effective date—1989 c 379:** See notes following RCW 84.36.040.

**84.36.046 Nonprofit cancer clinic or center.** (1) All real or personal property owned or used by a nonprofit organization, corporation, or association in connection with a nonprofit cancer clinic or center shall be exempt from taxation if all of the following conditions are met:

(a) The nonprofit cancer clinic or center must be comprised of or have been formed by an organization, corporation, or association qualified for exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)), by a municipal hospital corporation, or by both;

(b) The nonprofit organization, corporation, or association operating the nonprofit clinic or center and applying for the exemption must be qualified for exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)); and

(c) The property must be used primarily in connection with the prevention, detection, and treatment of cancer, except as provided in RCW 84.36.805.

(2)(a) As used in this section, "nonprofit cancer clinic or center" means a medical facility operated:

(i) By a nonprofit organization, corporation, or association associated with a nonprofit hospital or group of nonprofit hospitals, by a municipal hospital corporation, or by both; and

(ii) For the primary purpose of preventing and detecting cancer and treating cancer patients.

(b) For the purposes of this subsection, "primary purpose" means that at least fifty-one percent of the patients who receive treatment at the clinic or center do so because they have been diagnosed as having cancer. In carrying out its primary purpose, the nonprofit cancer clinic or center provides any combination of radiation therapy, chemotherapy, and ancillary services, directly related to the prevention, detection, and treatment of cancer. These ancillary services include, but are not limited to, patient screening, case management, counseling, and access to a tumor registry.

(3) The exemption also applies to administrative offices located within the nonprofit cancer clinic or center that are

used exclusively in conjunction with the cancer treatment services provided by the nonprofit cancer clinic or center.

(4) If the real or personal property for which exemption is sought is leased, the benefit of the exemption must inure to the nonprofit cancer clinic or center. [1997 c 143 § 1.]

**Applicability—1997 c 143:** "This act is effective for taxes levied for collection in 1998 and thereafter." [1997 c 143 § 5.]

#### **84.36.070 Intangible personal property—Appraisal.**

(1) Intangible personal property is exempt from ad valorem taxation.

(2) "Intangible personal property" means:

(a) All moneys and credits including mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, state, county and municipal bonds and warrants and bonds and warrants of other taxing districts, bonds of the United States and of foreign countries or political subdivisions thereof and the bonds, stocks, or shares of private corporations;

(b) Private nongovernmental personal service contracts, private nongovernmental athletic or sports franchises, or private nongovernmental athletic or sports agreements provided that the contracts, franchises, or agreements do not pertain to the use or possession of tangible personal or real property or to any interest in tangible personal or real property; and

(c) Other intangible personal property such as trademarks, trade names, brand names, patents, copyrights, trade secrets, franchise agreements, licenses, permits, core deposits of financial institutions, noncompete agreements, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, or integrity of a business.

(3) "Intangible personal property" does not include zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, the availability of a skilled work force, and other characteristics or attributes of property.

(4) This section does not preclude the use of, or permit a departure from, generally accepted appraisal practices and the appropriate application thereof in the valuation of real and tangible personal property, including the appropriate consideration of licenses, permits, and franchises granted by a government agency that affect the use of the property. [1997 c 181 § 1; 1974 ex.s. c 118 § 1; 1961 c 15 § 84.36.070. Prior: 1931 c 96 § 1; RRS § 11111-1. FORMER PART OF SECTION: 1925 ex.s. c 130 § 5, part, now codified in RCW 84.04.080.]

**Construction—1997 c 181:** "This act shall not be construed to amend or modify any existing statute or rule relating to the treatment of computer software, retained rights in computer software, and golden and master copies of computer software for property tax purposes." [1997 c 181 § 3.]

**Intent—No relation to other state's law—1997 c 181:** "Nothing in this act is intended to incorporate and nothing in this act is based on any other state's statutory or case law." [1997 c 181 § 4.]

**Severability—1997 c 181:** "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." [1997 c 181 § 5.]

**Applicability—1997 c 181:** "This act is effective for taxes levied for collection in 1999 and thereafter." [1997 c 181 § 6.]

**Report to legislature—1997 c 181:** "By December 1, 2000, the department of revenue shall submit a report to the house finance committee, the senate ways and means committee, and the office of the governor on tax shifts, tax losses, and any litigation resulting from this act." [1997 c 181 § 7.]

**84.36.255 Improvements to benefit fish and wildlife habitat, water quality, and water quantity—Cooperative assistance to landowners—Certification of best management practice—Limitation—Landowner claim and certification.**

(1) All improvements to real and personal property that benefit fish and wildlife habitat, water quality, or water quantity are exempt from taxation if the improvements are included under a written conservation plan approved by a conservation district. The conservation districts shall cooperate with the federal natural resource conservation service, other conservation districts, the department of ecology, the department of fish and wildlife, and nonprofit organizations to assist landowners by working with them to obtain approved conservation plans so as to qualify for the exemption provided for in this section. As provided in subsection (3) of this section and RCW 89.08.440(2), a conservation district shall certify that the best management practice benefits fish and wildlife habitat, water quality, or water quantity. A habitat conservation plan under the terms of the federal endangered species act shall not be considered a conservation plan for purposes of this exemption.

(2) The exemption shall remain in effect only if improvements identified in the written best management practices agreement are maintained as originally approved or amended. Improvements made as a requirement to mitigate for impacts to fish and wildlife habitat, water quality, or water quantity are not eligible for exemption under this section.

(3) A claim for exemption under this section may be filed annually with the county assessor at any time during the year for exemption from taxes levied for collection in the following year when submitted on forms prescribed by the department of revenue developed in consultation with the conservation district. The landowner shall certify each year that the improvements for which exemption is sought are maintained as originally approved or amended in the written conservation plan. The claim must contain the certification by the conservation district that the improvements for which exemption is sought were included under a written conservation plan approved by the conservation district including best management practices that benefit fish and wildlife habitat, water quality, or water quantity. [1997 c 295 § 2.]

**Application—1997 c 295 § 2:** "Section 2 of this act applies to taxes levied for collection in 1998 and thereafter." [1997 c 295 § 4.]

**Purpose—1997 c 295:** "The purpose of this act is to improve fish and wildlife habitat, water quality, and water quantity for the benefit of the public at large. Private property owners should be encouraged to make voluntary improvements to their property as recommended by governmental agencies without the penalty of paying higher property taxes as a result of those improvements." [1997 c 295 § 1.]

**84.36.470 Agricultural products—Exemption.** The following property shall be exempt from taxation: Any agricultural product as defined in RCW 82.04.213 and grown or produced for sale by any person upon the person's own lands or upon lands in which the person has a present right

of possession. Taxpayers shall not be required to report, or assessors to list, the inventories covered by this exemption. [1997 c 156 § 6; 1989 c 378 § 12; 1975 1st ex.s. c 291 § 17; 1974 ex.s. c 169 § 8.]

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Severability—Effective date—Intent—1974 ex.s. c 169:** See notes following RCW 82.04.444.

*Powers of department of revenue to promulgate rules and prescribe procedures to carry out this section: RCW 84.40.405.*

**84.36.487 Air pollution control equipment in thermal electric generation facilities—Records—Payments on cessation of operation.**

(1) Air pollution control equipment constructed or installed after May 15, 1997, by businesses engaged in the generation of electric energy at thermal electric generation facilities first placed in operation after December 31, 1969, and before July 1, 1975, shall be exempt from property taxation. The owners shall maintain the records in such a manner that the annual beginning and ending asset balance of the pollution control facilities and depreciation method can be identified.

(2) For the purposes of this section, "air pollution control equipment" means any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(3) RCW 82.32.393 applies to this section. [1997 c 368 § 11.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**84.36.800 Definitions.** As used in RCW 84.36.020, 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.050, 84.36.060, 84.36.550, 84.36.046, and 84.36.800 through 84.36.865:

(1) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed;

(2) "Convent" means a house or set of buildings occupied by a community of clergy or nuns devoted to religious life under a superior;

(3) "Hospital" means any portion of a hospital building, or other buildings in connection therewith, used as a residence for persons engaged or employed in the operation of a hospital, or operated as a portion of the hospital unit;

(4) "Nonprofit" means an organization, association or corporation no part of the income of which is paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization, association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state;

(5) "Parsonage" means a residence occupied by a member of the clergy who has been designated for a particular congregation and who holds regular services therefor. [1997 c 156 § 7; 1997 c 143 § 2; 1994 c 124 § 18; 1993 c 79 § 2; 1989 c 379 § 3; 1981 c 141 § 3; 1973 2nd ex.s. c 40 § 6.]

**Reviser's note:** This section was amended by 1997 c 143 § 2 and by 1997 c 156 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Applicability—1997 c 143:** See note following RCW 84.36.046.

**Applicability—1993 c 79:** See note following RCW 84.36.550.

**Severability—Effective date—1989 c 379:** See notes following RCW 84.36.040

**Applicability, construction—1981 c 141:** See note following RCW 84.36.060.

**84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations or corporations.** In order to be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, 84.36.550, and 84.36.046, the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.035, 84.36.040, 84.36.041, 84.36.043, or 84.36.046 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, and 84.36.046. [1997 c 156 § 8; 1997 c 143 § 3; 1995 2nd sp.s. c 9 § 2; 1993 c 79 § 3. Prior: 1990 c 283 §§ 3 and 7; 1989 c 379 § 4; 1987 c 468 § 1; 1984 c 220 § 7; 1981 c 141 § 4; 1973 2nd ex.s. c 40 § 7.]

**Reviser's note:** This section was amended by 1997 c 143 § 3 and by 1997 c 156 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Applicability—1997 c 143:** See note following RCW 84.36.046.

**Applicability—1995 2nd sp.s. c 9 §§ 1 and 2:** See note following RCW 84.36.035.

**Effective date—1995 2nd sp.s. c 9:** See note following RCW 84.36.035.

**Applicability—1993 c 79:** See note following RCW 84.36.550.

**Construction—1990 c 283:** See note following RCW 84.36.030.

**Severability—Effective date—1989 c 379:** See notes following RCW 84.36.040.

**Applicability—1987 c 468:** "This act shall be effective for taxes levied for collection in 1988 and thereafter." [1987 c 468 § 3.]

**Applicability, construction—1981 c 141:** See note following RCW 84.36.060.

**84.36.810 Cessation of use under which exemption granted—Collection of taxes.** (1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.050, 84.36.060, 84.36.550, and 84.36.046, the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes. Where the property has been granted an exemption for more than ten years, taxes and interest shall not be assessed under this section.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property has lost its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under the provisions of chapter 84.36 RCW;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on property that had been exempt under RCW 84.36.040, 84.36.041, 84.36.043, 84.36.060, or 84.36.046;

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(3), as long as some portion of the home remains exempt;

(h) The conversion of a full exemption of a home for the aging to a partial exemption or taxable status or the conversion of a partial exemption to taxable status under RCW 84.36.041(8). [1997 c 156 § 9; 1997 c 143 § 4; 1994 c 124 § 19; 1993 c 79 § 4; 1990 c 283 § 4; 1989 c 379 § 5; 1987 c 468 § 2; 1984 c 220 § 8; 1983 c 185 § 1; 1981 c 141 § 5; 1977 ex.s. c 209 § 1; 1973 2nd ex.s. c 40 § 8.]

**Reviser's note:** This section was amended by 1997 c 143 § 4 and by 1997 c 156 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Applicability—1997 c 143:** See note following RCW 84.36.046.

**Applicability—1993 c 79:** See note following RCW 84.36.550.

**Severability—Effective date—1989 c 379:** See notes following RCW 84.36.040.

**Applicability—1987 c 468:** See note following RCW 84.36.805.

**Applicability, construction—1981 c 141:** See note following RCW 84.36.060.

### Chapter 84.38

## DEFERRAL OF SPECIAL ASSESSMENTS AND/OR PROPERTY TAXES

### Sections

84.38.020 Definitions.

**84.38.020 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) "Claimant" means a person who either elects or is required under RCW 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on the claimant's residence by filing a declaration to defer as provided by this chapter.

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) "Department" means the state department of revenue.

(3) "Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.

(4) "Local government" means any city, town, county, water-sewer district, public utility district, port district,

irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special assessments.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year.

(6) "Residence" has the meaning given in RCW 84.36.383, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations.

(7) "Special assessment" means the charge or obligation imposed by a local government upon property specially benefited. [1997 c 93 § 1; 1996 c 230 § 1614; 1995 c 329 § 1; 1991 c 213 § 1; 1984 c 220 § 20; 1979 ex.s. c 214 § 5; 1975 1st ex.s. c 291 § 27.]

**Effective date—1997 c 93:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 93 § 2.]

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Applicability—1991 c 213:** "Sections 1 and 2 of this act shall be effective for taxes levied for collection in 1991 and thereafter. Sections 3 and 4 of this act shall be effective for taxes levied for collection in 1992 and thereafter." [1991 c 213 § 6.]

### Chapter 84.40

## LISTING OF PROPERTY

### Sections

- 84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records. (*Effective unless Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.40.030 Basis of valuation—One hundred percent of true and fair value—Leasehold estates—Real property—Appraisal—Comparable sales. (*Effective unless Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.40.030 Basis of valuation, assessment, appraisal—One hundred percent of true and fair value—Exceptions—Leasehold estates—Real property—Appraisal—Comparable sales. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.40.0305 Assessed value—Determination—Limited value. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.40.038 Petition county board of equalization for change in assessed valuation—Limitation on changes to time limit—Waiver of filing deadline—Direct appeal to state board of tax appeals.
- 84.40.040 Time and manner of listing. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
- 84.40.042 Valuation and assessment of divided or combined property.
- 84.40.045 Notice of change in valuation of real property to be given taxpayer—Copy to person making payments pursuant to mortgage, contract, or deed of trust—Procedure—Penalty. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)



84.40.160 Manner of listing real estate—Maps.  
 84.40.340 Verification by assessor of any list, statement, or schedule—  
 Confidentiality. penalty.

**84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records.** (*Effective unless Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) All real property in this state subject to taxation shall be listed and assessed every year, with reference to its value on the first day of January of the year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's office: PROVIDED, That confidential income data is hereby exempted from public inspection as noted in RCW 42.17.260 and 42.17.310. All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership on the first day of January of the year in which it is assessed: PROVIDED, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business. [1997 c 239 § 2; 1973 c 69 § 1; 1967 ex.s. c 149 § 35; 1961 c 15 § 84.40.020. Prior: (i) 1939 c 137 § 1; 1925 ex.s. c 130 § 8; 1897 c 71 § 6; 1895 c 176 § 3; 1893 c 124 § 6; 1891 c 140 §§ 1, 6; 1890 p 532 § 6; Code 1881 § 2832; 1871 p 40 § 15; 1869 p 180 § 15; 1867 p 62 § 6; 1854 p 332 § 4; RRS § 11112. (ii) 1937 c 122 § 1; 1890 p 532 § 6; RRS § 11112-1.]

**Effective date—1967 ex.s. c 149:** See note following RCW 82.04.050.

**Savings—1967 ex.s. c 149:** See RCW 82.98.035.

**Severability—1967 ex.s. c 149:** See note following RCW 82.98.030.

**84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) All real property in this state subject to taxation shall be listed and assessed every year, with reference to its appraised and assessed values on the first day of January of the year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's office: PROVIDED, That confidential income data is hereby exempted from public inspection as noted in RCW 42.17.260 and 42.17.310. All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership on the first day of January of the year in which it is assessed: PROVIDED, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be

listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business. [1997 c 239 § 2; 1997 c 3 § 103; 1973 c 69 § 1; 1967 ex.s. c 149 § 35; 1961 c 15 § 84.40.020. Prior: (i) 1939 c 137 § 1; 1925 ex.s. c 130 § 8; 1897 c 71 § 6; 1895 c 176 § 3; 1893 c 124 § 6; 1891 c 140 §§ 1, 6; 1890 p 532 § 6; Code 1881 § 2832; 1871 p 40 § 15; 1869 p 180 § 15; 1867 p 62 § 6; 1854 p 332 § 4; RRS § 11112. (ii) 1937 c 122 § 1; 1890 p 532 § 6; RRS § 11112-1.]

**Reviser's note:** This section was amended by 1997 c 3 § 103 and by 1997 c 239 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Effective date—1967 ex.s. c 149:** See note following RCW 82.04.050.

**Savings—1967 ex.s. c 149:** See RCW 82.98.035.

**Severability—1967 ex.s. c 149:** See note following RCW 82.98.030.

**84.40.030 Basis of valuation—One hundred percent of true and fair value—Leasehold estates—Real property—Appraisal—Comparable sales.** (*Effective unless Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1), consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of

income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (2) shall be the dominant factors in valuation. When provisions of this subsection (2) are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the value of the land, exclusive of structures thereon shall be determined; also the value of structures thereon, but the valuation shall not exceed the value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

(4) In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen-space uses within five years after the sale. [1997 c 429 § 34; 1997 c 134 § 1; 1994 c 124 § 20; 1993 c 436 § 1; 1988 c 222 § 14; 1980 c 155 § 2. Prior: 1973 1st ex.s. c 195 § 96; 1973 1st ex.s. c 187 § 1; 1972 ex.s. c 125 § 2; 1971 ex.s. c 288 § 1; 1971 ex.s. c 43 § 1; 1961 c 15 § 84.40.030; prior: 1939 c 206 § 15; 1925 ex.s. c 130 § 52; 1919 c 142 § 4; 1913 c 140 § 1; 1897 c 71 § 42; 1893 c 124 § 44; 1891 c 140 § 44; 1890 p 547 § 48; RRS § 11135. FORMER PART OF SECTION: 1939 c 116 § 1, part, now codified in RCW 84.40.220.]

**Reviser's note:** This section was amended by 1997 c 134 § 1 and by 1997 c 429 § 34, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Effective date—Applicability—1980 c 155:** "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 and shall be effective for assessments made in 1980 and years thereafter." [1980 c 155 § 8.]

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

**Severability—Construction—1973 1st ex.s. c 187:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973 amendatory act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That if the leasehold in lieu excise tax imposed by section 4 of this 1973 amendatory act is held invalid, the entirety of the act, except for section 3 and section 15, shall be null and void." [1973 1st ex.s. c 187 § 13.]

**Severability—1972 ex.s. c 125:** See note following RCW 84.40.045.

**Savings—1971 ex.s. c 288:** "The amendment or repeal of any statutes by this 1971 amendatory act shall not be construed as invalidating, abating or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed. Such amendment or repeals shall not affect the right of any person to make a claim for exemption during the calendar year 1971 pursuant to RCW 84.36.128." [1971 ex.s. c 288 § 12.]

**Severability—1971 ex.s. c 288:** "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 provision to other persons or circumstances is not affected." [1971 ex.s. c 288 § 28.]

**Severability—1971 ex.s. c 43:** "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 ex.s. c 43 § 6.]

**84.40.030 Basis of valuation, assessment, appraisal—One hundred percent of true and fair value—Exceptions—Leasehold estates—Real property—Appraisal—Comparable sales.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) All personal property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

All real property shall be appraised at one hundred percent of its true and fair value in money and assessed as provided in RCW 84.40.0305 unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection (2) shall be the dominant factors in valuation. When provisions of this subsection (2) are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon shall be determined; also the true and fair value of

structures thereon, but the appraised valuation shall not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

(4) In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen-space uses within five years after the sale. [1997 c 429 § 34; 1997 c 134 § 1; 1997 c 3 § 104; 1994 c 124 § 20; 1993 c 436 § 1; 1988 c 222 § 14; 1980 c 155 § 2. Prior: 1973 1st ex.s. c 195 § 96; 1973 1st ex.s. c 187 § 1; 1972 ex.s. c 125 § 2; 1971 ex.s. c 288 § 1; 1971 ex.s. c 43 § 1; 1961 c 15 § 84.40.030; prior: 1939 c 206 § 15; 1925 ex.s. c 130 § 52; 1919 c 142 § 4; 1913 c 140 § 1; 1897 c 71 § 42; 1893 c 124 § 44; 1891 c 140 § 44; 1890 p 547 § 48; RRS § 11135. FORMER PART OF SECTION: 1939 c 116 § 1, part, now codified in RCW 84.40.220.]

**Reviser's note:** This section was amended by 1997 c 3 § 104, 1997 c 134 § 1, and by 1997 c 429 § 34, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Application—1997 c 3:** "(1) Sections 101 through 126 of this act apply to taxes levied for collection in 1999 and thereafter.

(2) Sections 201 through 207 of this act apply to taxes levied for collection in 1998 and thereafter." [1997 c 3 § 501.]

**Severability—1997 c 3:** "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." [1997 c 3 § 502.]

**Part headings not law—1997 c 3:** "Part headings used in this act are not any part of the law." [1997 c 3 § 503.]

**Referral to electorate—1997 c 3:** "Except for section 401 of this act, the secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation." [1997 c 3 § 504.]

**Effective date—Applicability—1980 c 155:** "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 and shall be effective for assessments made in 1980 and years thereafter." [1980 c 155 § 8.]

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

**Severability—Construction—1973 1st ex.s. c 187:** "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1973 amendatory act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That if the leasehold in lieu excise tax imposed by section 4 of this 1973 amendatory act is held invalid, the entirety of the act, except for section 3 and section 15, shall be null and void." [1973 1st ex.s. c 187 § 13.]

**Severability—1972 ex.s. c 125:** See note following RCW 84.40.045.

**Savings—1971 ex.s. c 288:** "The amendment or repeal of any statutes by this 1971 amendatory act shall not be construed as invalidating, abating or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed. Such amendment or repeals shall not affect the right of any person to make a claim for exemption during the calendar year 1971 pursuant to RCW 84.36.128." [1971 ex.s. c 288 § 12.]

**Severability—1971 ex.s. c 288:** "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 provision to other persons or circumstances is not affected." [1971 ex.s. c 288 § 28.]

**Severability—1971 ex.s. c 43:** "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 ex.s. c 43 § 6.]

**84.40.0305 Assessed value—Determination—Limited value.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) (1) As used in this section:

(a) "Previous assessed value" means the assessed value for the year immediately preceding the year for which a calculation is being made under this section.

(b) "Current appraised value" means the appraised value for the year for which a calculation is being made under this section.

(c) "Total value increase" means the current appraised value minus the previous assessed value. Total value increase can never be less than zero.

(d) "Improvement increase" means the portion of the total value increase attributable to any physical improvements made to the property since the previous assessment, other than improvements exempt under RCW 84.36.400 for the year for which a calculation is being made under this section. Improvement increase can never be less than zero.

(e) "Market increase" means the total value increase minus the improvement increase. Market increase can never be less than zero.

(2) The assessed value of property is equal to the lesser of the current appraised value or a limited value determined under this section. The limited value is equal to the greater of:

(a) The improvement increase plus one hundred fifteen percent of the previous assessed value; or

(b) The sum of:

(i) The previous assessed value;

(ii) The improvement increase; and

(iii) Twenty-five percent of the market increase.

(3) Upon loss of preferential tax treatment for property that qualifies for preferential tax treatment under chapter 84.14, 84.26, 84.33, 84.34, or 84.36 RCW, the previous assessed value shall be the assessed value the property would have had without the preferential tax treatment. [1997 c 3 § 105.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**84.40.038 Petition county board of equalization for change in assessed valuation—Limitation on changes to time limit—Waiver of filing deadline—Direct appeal to state board of tax appeals.** (1) The owner or person responsible for payment of taxes on any property may petition the county board of equalization for a change in the assessed valuation placed upon such property by the county assessor. Such petition must be made on forms prescribed or approved by the department of revenue and any petition not conforming to those requirements or not properly completed shall not be considered by the board. The petition must be filed with the board on or before July 1st of the year of the assessment, within thirty days after the date an assessment or value change notice has been mailed, or within a time limit of up to sixty days adopted by the county legislative authority, whichever is later. If a county legisla-

tive authority sets a time limit, the authority may not change the limit for three years from the adoption of the limit.

(2) The board of equalization may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause for the late filing. The decision of the board of equalization regarding a waiver of the filing deadline is final and not appealable under RCW 84.08.130. Good cause may be shown by one or more of the following events or circumstances:

(a) Death or serious illness of the taxpayer or his or her immediate family;

(b) The taxpayer was absent from the address where the taxpayer normally receives the assessment or value change notice, was absent for more than fifteen days of the days allowed in subsection (1) of this section before the filing deadline, and the filing deadline is after July 1;

(c) Incorrect written advice regarding filing requirements received from board of equalization staff, county assessor's staff, or staff of the property tax advisor designated under RCW 84.48.140;

(d) Natural disaster such as flood or earthquake;

(e) Delay or loss related to the delivery of the petition by the postal service, and documented by the postal service; or

(f) Other circumstances as the department may provide by rule.

(3) The owner or person responsible for payment of taxes on any property may request that the appeal be heard by the state board of tax appeals without a hearing by the county board of equalization when the assessor, the owner or person responsible for payment of taxes on the property, and a majority of the county board of equalization agree that a direct appeal to the state board of tax appeals is appropriate. The state board of tax appeals may reject the appeal, in which case the county board of equalization shall consider the appeal under RCW 84.48.010. Notice of such a rejection, together with the reason therefor, shall be provided to the affected parties and the county board of equalization within thirty days of receipt of the direct appeal by the state board. [1997 c 294 § 1; 1994 c 123 § 4; 1992 c 206 § 11; 1988 c 222 § 19.]

**Applicability—1994 c 123:** See note following RCW 84.36.815.

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**Effective date—1988 c 222:** See note following RCW 84.40.040.

**84.40.040 Time and manner of listing.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

The assessor shall begin the preliminary work for each assessment not later than the first day of December of each year in all counties in the state. The assessor shall also complete the duties of listing and placing valuations on all property by May 31st of each year, except that the listing and valuation of construction and mobile homes under RCW 36.21.080 and 36.21.090 shall be completed by August 31st of each year, and in the following manner, to wit:

The assessor shall actually determine as nearly as practicable the true and fair value of each tract or lot of land listed for taxation and of each improvement located thereon and shall enter as the appraised value one hundred percent

of the true and fair value of such land and of the total true and fair value of such improvements, together with the total of such one hundred percent valuations, opposite each description of property on the assessment list and tax roll.

The assessor shall determine the assessed value, under RCW 84.40.0305, for each tract or lot of land listed for taxation, including improvements located thereon, and shall also enter this value opposite each description of property on the assessment list and tax roll.

The assessor shall make an alphabetical list of the names of all persons in the county liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the standard form prescribed by the department of revenue, which statement and list shall include, if required by the form, the year of acquisition and total original cost of personal property in each category of the prescribed form, and shall be signed and verified under penalty of perjury by the person listing the property: PROVIDED, That the assessor may list and value improvements on publicly owned land in the same manner as real property is listed and valued, including conformance with the revaluation program required under chapter 84.41 RCW. Such list and statement shall be filed on or before the last day of April. The assessor shall on or before the 1st day of January of each year mail a notice to all such persons at their last known address that such statement and list is required, such notice to be accompanied by the form on which the statement or list is to be made: PROVIDED, That the notice mailed by the assessor to each taxpayer each year shall, if practicable, include the statement and list of personal property of the taxpayer for the preceding year. Upon receipt of such statement and list the assessor shall thereupon determine the true and fair value of the property included in such statement and enter one hundred percent of the same on the assessment roll opposite the name of the party assessed; and in making such entry in the assessment list, the assessor shall give the name and post office address of the party listing the property, and if the party resides in a city the assessor shall give the street and number or other brief description of the party's residence or place of business. The assessor may, after giving written notice of the action to the person to be assessed, add to the assessment list any taxable property which should be included in such list. [1997 c 3 § 106; 1988 c 222 § 15; 1982 1st ex.s. c 46 § 5; 1973 1st ex.s. c 195 § 97; 1967 ex.s. c 149 § 36; 1961 c 15 § 84.40.040. Prior: 1939 c 206 § 16, part; 1925 ex.s. c 130 § 57, part; 1897 c 71 § 46, part; 1895 c 176 § 5, part; 1893 c 124 § 48, part; 1891 c 140 § 48, part; RRS § 11140, part.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Effective date—1988 c 222:** "Sections 15, 17, 19, 20, 21, 28, and 30 of this act shall take effect January 1, 1989." [1988 c 222 § 35.]

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

**Effective date—1967 ex.s. c 149:** See note following RCW 82.04.050.

**Savings—1967 ex.s. c 149:** See RCW 82.98.035.

**Severability—1967 ex.s. c 149:** See note following RCW 82.98.030.

**84.40.042 Valuation and assessment of divided or combined property.** (1) When real property is divided in

accordance with chapter 58.17 RCW, the assessor shall carefully investigate and ascertain the true and fair value of each lot and assess each lot on that same basis, unless specifically provided otherwise by law. For purposes of this section, "lot" has the same definition as in RCW 58.17.020.

(a) For each lot on which an advance tax deposit has been paid in accordance with RCW 58.08.040, the assessor shall establish the true and fair value by October 30 of the year following the recording of the plat, replat, altered plat, or binding site plan. The value established shall be the value of the lot as of January 1 of the year the original parcel of real property was last revalued. An additional property tax shall not be due on the land until the calendar year following the year for which the advance tax deposit was paid if the deposit was sufficient to pay the full amount of the taxes due on the property.

(b) For each lot on which an advance tax deposit has not been paid, the assessor shall establish the true and fair value not later than the calendar year following the recording of the plat, map, subdivision, or replat. For purposes of this section, "subdivision" means a division of land into two or more lots.

(c) For each subdivision, all current year and delinquent taxes and assessments on the entire tract must be paid in full in accordance with RCW 58.17.160 and 58.08.030. For purposes of this section, "current year taxes" means taxes that are collectible under RCW 84.56.010 subsequent to February 14.

(2) When the assessor is required by law to segregate any part or parts of real property, assessed before or after July 27, 1997, as one parcel or when the assessor is required by law to combine parcels of real property assessed before or after July 27, 1997, as two or more parcels, the assessor shall carefully investigate and ascertain the true and fair value of each part or parts of the real property and each combined parcel and assess each part or parts or each combined parcel on that same basis. [1997 c 393 § 17.]

**84.40.045 Notice of change in valuation of real property to be given taxpayer—Copy to person making payments pursuant to mortgage, contract, or deed of trust—Procedure—Penalty.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) The assessor shall give notice of any change in the assessed value of real property for the tract or lot of land and any improvements thereon no later than thirty days after appraisal: PROVIDED, That no such notice shall be mailed during the period from January 15 to February 15 of each year: PROVIDED FURTHER, That no notice need be sent with respect to changes in valuation of forest land made pursuant to chapter 84.33 RCW.

The notice shall contain a statement of both the prior and the new appraised and assessed values, stating separately land and improvement appraised values, and a brief statement of the procedure for appeal to the board of equalization and the time, date, and place of the meetings of the board.

The notice shall be mailed by the assessor to the taxpayer.

If any taxpayer, as shown by the tax rolls, holds solely a security interest in the real property which is the subject of

the notice, pursuant to a mortgage, contract of sale, or deed of trust, such taxpayer shall, upon written request of the assessor, supply, within thirty days of receipt of such request, to the assessor the name and address of the person making payments pursuant to the mortgage, contract of sale, or deed of trust, and thereafter such person shall also receive a copy of the notice provided for in this section. Willful failure to comply with such request within the time limitation provided for herein shall make such taxpayer subject to a maximum civil penalty of five thousand dollars. The penalties provided for herein shall be recoverable in an action by the county prosecutor, and when recovered shall be deposited in the county current expense fund. The assessor shall make the request provided for by this section during the month of January. [1997 c 3 § 107; 1994 c 301 § 36; 1977 ex.s. c 181 § 1; 1974 ex.s. c 187 § 8; 1972 ex.s. c 125 § 1; 1971 ex.s. c 288 § 16; 1967 ex.s. c 146 § 10.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Severability—1974 ex.s. c 187:** See note following RCW 84.33.110.

**Severability—1972 ex.s. c 125:** "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." [1972 ex.s. c 125 § 4.]

**Savings—Severability—1971 ex.s. c 288:** See notes following RCW 84.40.030.

**84.40.160 Manner of listing real estate—Maps.** The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the plat and description book in numerical order a complete list of all lands or lots subject to taxation, showing the names and owners, if to him known and if unknown, so stated; the number of acres and lots or parts of lots included in each description of property and the value per acre or lot: PROVIDED, That the assessor shall give to each tract of land where described by metes and bounds a number, to be designated as Tax No. . . ., which said number shall be placed on the tax rolls to indicate that certain piece of real property bearing such number, and described by metes and bounds in the plat and description book herein mentioned, and it shall not be necessary to enter a description by metes and bounds on the tax roll of the county, and the assessor's plat and description book shall be kept as a part of the tax collector's records: AND PROVIDED, FURTHER, That the board of county commissioners of any county may by order direct that the property be listed numerically according to lots and blocks or section, township and range, in the smallest platted or government subdivision, and when so listed the value of each block, lot or tract, the value of the improvements thereon and the total value thereof, including improvements thereon, shall be extended after the description of each lot, block or tract, which last extension shall be in the column headed "Total value of each tract, lot or block of land assessed with improvements as returned by the assessor." In carrying the values of said property into the column representing the equalized value thereof, the county assessor shall include and carry over in one item the equalized valuation of all lots in one block, or land in one section, listed consecutively, which belong to any one person, firm or corporation, and are situated within the same taxing district, and in the assessed value of which

the county board of equalization has made no change. Where assessed valuations are changed, the equalized valuation must be extended and shown by item.

The assessor shall prepare and possess a complete set of maps drawn to indicate parcel configuration for lands in the county. The assessor shall continually update the maps to reflect transfers, conveyances, acquisitions, or any other transaction or event that changes the boundaries of any parcel and shall renumber the parcels or prepare new map pages for any portion of the maps to show combinations or divisions of parcels. [1997 c 135 § 1; 1961 c 15 § 84.40.160. Prior: 1925 ex.s. c 130 § 54; 1901 c 79 § 1; 1899 c 141 § 3; 1897 c 71 § 43; 1895 c 176 § 4; 1893 c 124 § 45; 1891 c 140 § 45; 1890 p 548 § 49; RRS § 11137.]

**84.40.340 Verification by assessor of any list, statement, or schedule—Confidentiality, penalty.** For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or his trained and qualified deputy at any reasonable time may visit, investigate and examine any personal property, and for this purpose the records, accounts and inventories also shall be subject to any such visitation, investigation and examination which shall aid in determining the amount and valuation of such property. Such powers and duties may be performed at any office of the taxpayer in this state, and the taxpayer shall furnish or make available all such information pertaining to property in this state to the assessor although the records may be maintained at any office outside this state.

Any information or facts obtained pursuant to this section shall be used by the assessor only for the purpose of determining the assessed valuation of the taxpayer's property: PROVIDED, That such information or facts shall also be made available to the department of revenue upon request for the purpose of determining any sales or use tax liability with respect to personal property, and except in a civil or criminal judicial proceeding or an administrative proceeding in respect to penalties imposed pursuant to RCW 84.40.130, to such sales or use taxes, or to the assessment or valuation for tax purposes of the property to which such information and facts relate, shall not be disclosed by the assessor or the department of revenue without the permission of the taxpayer to any person other than public officers or employees whose duties relate to valuation of property for tax purposes or to the imposition and collection of sales and use taxes, and any violation of this secrecy provision shall constitute a gross misdemeanor. [1997 c 239 § 3; 1973 1st ex.s. c 74 § 1; 1967 ex.s. c 149 § 40; 1961 ex.s. c 24 § 6.]

**Effective date—1967 ex.s. c 149:** See note following RCW 82.04.050.

**Savings—1967 ex.s. c 149:** See RCW 82.98.035

**Severability—1967 ex.s. c 149:** See note following RCW 82.98.030.

**Chapter 84.41**

**REVALUATION OF PROPERTY**

Sections

84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data. (Effective December 4, 1997, if Referendum Bill

No. 47 is approved by the electorate at the November 1997 general election.)

**84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data.** (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.) Each county assessor shall cause taxable real property to be physically inspected and valued at least once every six years in accordance with RCW 84.41.030, and in accordance with a plan filed with and approved by the department of revenue. Such revaluation plan shall provide that a reasonable portion of all taxable real property within a county shall be revalued and these newly-determined values placed on the assessment rolls each year. The department may approve a plan that provides that all property in the county be revalued every two years. If the revaluation plan provides for physical inspection at least once each four years, during the intervals between each physical inspection of real property, the appraised valuation of such property may be adjusted to its current true and fair value, such adjustments to be based upon appropriate statistical data. If the revaluation plan provides for physical inspection less frequently than once each four years, during the intervals between each physical inspection of real property, the appraised valuation of such property shall be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data. If the appraised valuation is changed, the assessed value shall be recalculated under RCW 84.40.0305.

The assessor may require property owners to submit pertinent data respecting taxable property in their control including data respecting any sale or purchase of said property within the past five years, the cost and characteristics of any improvement on the property and other facts necessary for appraisal of the property. [1997 c 3 § 108; 1987 c 319 § 4; 1982 1st ex.s. c 46 § 2; 1979 ex.s. c 214 § 9; 1974 ex.s. c 131 § 2.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Chapter 84.48**

**EQUALIZATION OF ASSESSMENTS**

Sections

- 84.48.010 County board of equalization—Formation—Per diem—Meetings—Duties—Records—Correction of rolls—Extending taxes—Change in valuation, release or commutation of taxes by county legislative authority prohibited. (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)
- 84.48.065 Cancellation and correction of erroneous assessments and assessments on property on which land use designation is changed. (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)
- 84.48.075 County indicated ratio—Determination by department—Submission of preliminary ratio to assessor—Rules—Use classes—Review of preliminary ratio—Certification—Examination of assessment procedures—Adjustment of ratio. (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)

- 84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Hypothetical levy for establishing consolidated levy—Rules—Record. (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)
- 84.48.081 Treatment of intangible personal property. (Expires December 31, 1998.)

**84.48.010 County board of equalization—Formation—Per diem—Meetings—Duties—Records—Correction of rolls—Extending taxes—Change in valuation, release or commutation of taxes by county legislative authority prohibited.** (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.) Prior to July 15th, the county legislative authority shall form a board for the equalization of the assessment of the property of the county. The members of said board shall receive a per diem amount as set by the county legislative authority for each day of actual attendance of the meeting of the board of equalization to be paid out of the current expense fund of the county: PROVIDED, That when the county legislative authority constitute the board they shall only receive their compensation as members of the county legislative authority. The board of equalization shall meet in open session for this purpose annually on the 15th day of July and, having each taken an oath fairly and impartially to perform their duties as members of such board, they shall examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that the appraised value of each tract or lot of real property and each article or class of personal property shall be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, and so that the assessed value of each tract or lot of real property is entered on the assessment list at its correct amount, and subject to the following rules:

First. They shall raise the appraised valuation of each tract or lot or item of real property which is returned below its true and fair value to such price or sum as to be the true and fair value thereof, and raise the assessed valuation of each tract or lot or item of real property which is returned below its correct amount to the correct amount after at least five days' notice shall have been given in writing to the owner or agent.

Second. They shall reduce the appraised valuation of each tract or lot or item which is returned above its true and fair value to such price or sum as to be the true and fair value thereof and reduce the assessed valuation of each tract or lot or item of real property which is returned above its correct amount to the correct amount.

Third. They shall raise the valuation of each class of personal property which is returned below its true and fair value to such price or sum as to be the true and fair value thereof, and they shall raise the aggregate value of the personal property of each individual whenever the aggregate value is less than the true valuation of the taxable personal property possessed by such individual, to such sum or amount as to be the true value thereof, after at least five days' notice shall have been given in writing to the owner or agent thereof.

Fourth. They shall reduce the valuation of each class of personal property enumerated on the detail and assessment list of the current year, which is returned above its true and fair value, to such price or sum as to be the true and fair value thereof; and they shall reduce the aggregate valuation of the personal property of such individual who has been assessed at too large a sum to such sum or amount as was the true and fair value of the personal property.

Fifth. The board may review all claims for either real or personal property tax exemption as determined by the county assessor, and shall consider any taxpayer appeals from the decision of the assessor thereon to determine (1) if the taxpayer is entitled to an exemption, and (2) if so, the amount thereof.

The clerk of the board shall keep an accurate journal or record of the proceedings and orders of said board showing the facts and evidence upon which their action is based, and the said record shall be published the same as other proceedings of county legislative authority, and shall make a true record of the changes of the descriptions and appraised values ordered by the county board of equalization. The assessor shall recalculate assessed values and correct the real and personal assessment rolls in accordance with the changes made by the said county board of equalization, and the assessor shall make duplicate abstracts of such corrected values, one copy of which shall be retained in the office, and one copy forwarded to the department of revenue on or before the eighteenth day of August next following the meeting of the county board of equalization.

The county board of equalization shall meet on the 15th day of July and may continue in session and adjourn from time to time during a period not to exceed four weeks, but shall remain in session not less than three days: PROVIDED, That the county board of equalization with the approval of the county legislative authority may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater.

No taxes, except special taxes, shall be extended upon the tax rolls until the property valuations are equalized by the department of revenue for the purpose of raising the state revenue.

County legislative authorities as such shall at no time have any authority to change the valuation of the property of any person or to release or commute in whole or in part the taxes due on the property of any person. [1997 c 3 § 109; 1988 c 222 § 20; 1979 c 13 § 1. Prior: 1977 ex.s. c 290 § 2; 1977 c 33 § 1; 1970 ex.s. c 55 § 2; 1961 c 15 § 84.48.010; prior: 1939 c 206 § 35; 1925 ex.s. c 130 § 68; RRS § 11220; prior: 1915 c 122 § 1; 1907 c 129 § 1; 1897 c 71 § 58; 1893 c 124 § 59; 1890 p 555 § 73; Code 1881 §§ 2873-2879. Formerly RCW 84.48.010, 84.48.020, 84.48.030, 84.48.040, and 84.48.060.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Effective date—1988 c 222:** See note following RCW 84.40.040.

**Effective date—1970 ex.s. c 55:** See note following RCW 84.36.050.

**84.48.065 Cancellation and correction of erroneous assessments and assessments on property on which land use designation is changed.** (Effective December 4, 1997,



*if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) (1) The county assessor or treasurer may cancel or correct assessments on the assessment or tax rolls which are erroneous due to manifest errors in description, double assessments, clerical errors in extending the rolls, clerical errors in calculating the assessed value under RCW 84.40.0305, and such manifest errors in the listing of the property which do not involve a revaluation of property, except in the case that a taxpayer produces proof that an authorized land use authority has made a definitive change in the property's land use designation. In such a case, correction of the assessment or tax rolls may be made notwithstanding the fact that the action involves a revaluation of property. Manifest errors that do not involve a revaluation of property include the assessment of property exempted by law from taxation or the failure to deduct the exemption allowed by law to the head of a family. When the county assessor cancels or corrects an assessment, the assessor shall send a notice to the taxpayer in accordance with RCW 84.40.045, advising the taxpayer that the action has been taken and notifying the taxpayer of the right to appeal the cancellation or correction to the county board of equalization, in accordance with RCW 84.40.038. When the county assessor or treasurer cancels or corrects an assessment, a record of such action shall be prepared, setting forth therein the facts relating to the error. The record shall also set forth by legal description all property belonging exclusively to the state, any county, or any municipal corporation whose property is exempt from taxation, upon which there remains, according to the tax roll, any unpaid taxes. No manifest error cancellation or correction, including a cancellation or correction made due to a definitive change of land use designation, shall be made for any period more than three years preceding the year in which the error is discovered.

(2)(a) In the case of a definitive change of land use designation, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting forth in the agreement the valuation information upon which the agreement is based; and

(ii) The assessment roll has previously been certified in accordance with RCW 84.40.320.

(b) In all other cases, an assessor shall make corrections that involve a revaluation of property to the assessment roll when:

(i) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property setting forth in the agreement the valuation information upon which the agreement is based; and

(ii) The following conditions are met:

(A) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(B) The taxpayer has timely filed a petition with the county board of equalization pursuant to RCW 84.40.038 for the current assessment year;

(C) The county board of equalization has not yet held a hearing on the merits of the taxpayer's petition.

(3) The assessor shall issue a supplementary roll or rolls including such cancellations and corrections, and the assess-

ment and levy shall have the same force and effect as if made in the first instance, and the county treasurer shall proceed to collect the taxes due on the rolls as modified. [1997 c 3 § 110; 1996 c 296 § 1; 1992 c 206 § 12; 1989 c 378 § 14; 1988 c 222 § 25.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**84.48.075 County indicated ratio—Determination by department—Submission of preliminary ratio to assessor—Rules—Use classes—Review of preliminary ratio—Certification—Examination of assessment procedures—Adjustment of ratio.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) (1) The department of revenue shall annually, prior to the first Monday in September, determine and submit to each assessor a preliminary indicated ratio for each county: PROVIDED, That the department shall establish rules and regulations pertinent to the determination of the indicated ratio, the indicated real property ratio and the indicated personal property ratio: PROVIDED FURTHER, That these rules and regulations may provide that data, as is necessary for said determination, which is available from the county assessor of any county and which has been audited as to its validity by the department, shall be utilized by the department in determining the indicated ratio.

(2) To such extent as is reasonable, the department may define use classes of property for the purposes of determination of the indicated ratio. Such use classes may be defined with respect to property use and may include agricultural, open space, timber and forest lands.

(3) The department shall review each county's preliminary ratio with the assessor, a landowner, or an owner of an intercounty public utility or private car company of that county, if requested by the assessor, a landowner, or an owner of an intercounty public utility or private car company of that county, respectively, between the first and third Mondays of September. Prior to equalization of assessments pursuant to RCW 84.48.080 and after the third Monday of September, the department shall certify to each county assessor the real and personal property ratio for that county.

(4) The department of revenue shall also examine procedures used by the assessor to assess real and personal property in the county, including calculations, use of prescribed value schedules, and efforts to locate all taxable property in the county. If any examination by the department discloses other than market value is being listed as appraised value on the county assessment rolls of the county by the assessor and, after due notification by the department, is not corrected, the department of revenue shall, in accordance with rules adopted by the department, adjust the ratio of that type of property, which adjustment shall be used for determining the county's indicated ratio. [1997 c 3 § 111; 1988 c 222 § 23; 1982 1st ex.s. c 46 § 7; 1977 ex.s. c 284 § 3.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Purpose—Intent—1977 ex.s. c 284:** "It is the intent of the legislature that the methodology used in the equalization of property values for the purposes of the state levy, public utility assessment, and other purposes,

shall be designed to ensure uniformity and equity in taxation throughout the state to the maximum extent possible.

It is the purpose of this 1977 amendatory act to provide certain guidelines for the determination of the ratio of assessed value to the full true and fair value of the general property in each county." [1977 ex.s. c 284 § 1.]

**84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Hypothetical levy for establishing consolidated levy—Rules—Record.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) (1) Annually during the months of September and October, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state, and the assessment of the property of railroad and other companies assessed by the department, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the assessed valuation of the property in each county bears to the correct total assessed valuation of all property in the state.

First. The department shall classify all property, real and personal, and shall raise and lower the assessed valuation of any class of property in any county to a value that shall be equal, so far as possible, to the correct assessed value of such class as of January 1st of the current year, after determining the correct appraised value, and any adjustment applicable under RCW 84.40.0305 for the property, for the purpose of ascertaining the just amount of tax due from each county for state purposes. In equalizing personal property as of January 1st of the current year, the department shall use the assessment level of the preceding year. Such classification may be on the basis of types of property, geographical areas, or both. For purposes of this section, for each county that has not provided the department with an assessment return by December 1st, the department shall proceed, using facts and information and in a manner it deems appropriate, to estimate the value of each class of property in the county.

Second. The department shall keep a full record of its proceedings and the same shall be published annually by the department.

(2) The department shall levy the state taxes authorized by law. The amount levied in any one year for general state purposes shall not exceed the lawful dollar rate on the dollar of the assessed value of the property of the entire state as equalized under this section. The department shall apportion the amount of tax for state purposes levied by the department, among the several counties, in proportion to the assessed valuation of the taxable property of the county for the year as equalized by the department: PROVIDED, That for purposes of this apportionment, the department shall recompute the previous year's levy and the apportionment thereof to correct for changes and errors in taxable values reported to the department after October 1 of the preceding year and shall adjust the apportioned amount of the current year's state levy for each county by the difference between the apportioned amounts established by the original and revised levy computations for the previous year. For purposes of this section, changes in taxable values mean a final adjustment made by a county board of equalization, the

state board of tax appeals, or a court of competent jurisdiction and shall include additions of omitted property, other additions or deletions from the assessment or tax rolls, any assessment return provided by a county to the department subsequent to December 1st, or a change in the indicated ratio of a county. Errors in taxable values mean errors corrected by a final reviewing body.

In addition to computing a levy under this subsection that is reduced under RCW 84.55.012, the department shall compute a hypothetical levy without regard to the reduction under RCW 84.55.012. This hypothetical levy shall also be apportioned among the several counties in proportion to the valuation of the taxable property of the county for the year, as equalized by the department, in the same manner as the actual levy and shall be used by the county assessors for the purpose of recomputing and establishing a consolidated levy under RCW 84.52.010.

(3) The department shall have authority to adopt rules and regulations to enforce obedience to its orders in all matters in relation to the returns of county assessments, the equalization of values, and the apportionment of the state levy by the department.

(4) After the completion of the duties prescribed in this section, the director of the department shall certify the record of the proceedings of the department under this section, the tax levies made for state purposes and the apportionment thereof among the counties, and the certification shall be available for public inspection. [1997 c 3 § 112; 1995 2nd sp.s. c 13 § 3; 1994 c 301 § 43; 1990 c 283 § 1; 1988 c 222 § 24; 1982 1st ex.s. c 28 § 1; 1979 ex.s. c 86 § 3; 1973 1st ex.s. c 195 § 99; 1971 ex.s. c 288 § 9; 1961 c 15 § 84.48.080. Prior: 1949 c 66 § 1; 1939 c 206 § 36; 1925 ex.s. c 130 § 70; Rem. Supp. 1949 § 11222; prior: 1917 c 55 § 1; 1915 c 7 § 1; 1907 c 215 § 1; 1899 c 141 § 4; 1897 c 71 § 60; 1893 c 124 § 61; 1890 p 557 § 75. Formerly RCW 84.48.080, 84.48.090, and 84.48.100.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Intent—1995 2nd sp.s. c 13:** See note following RCW 84.55.012.

**Severability—1982 1st ex.s. c 28:** "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." [1982 1st ex.s. c 28 § 3.]

**Severability—1979 ex.s. c 86:** See note following RCW 13.24.040.

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

**Savings—Severability—1971 ex.s. c 288:** See notes following RCW 84.40.030.

**84.48.081 Treatment of intangible personal property.** (*Expires December 31, 1998.*) (1) In equalizing personal property as of January 1, 1998, the department shall treat intangible personal property in the same manner as intangible personal property is to be treated after July 27, 1997.

(2) This section expires December 31, 1998. [1997 c 181 § 2.]

**Construction—Intent—No relation to other state's law—Severability—Applicability—Report to legislature—1997 c 181:** See notes following RCW 84.36.070.

**Chapter 84.52**  
**LEVY OF TAXES**

## Sections

- 84.52.053 Levies by school districts authorized—When—Procedure. (*Effective December 4, 1997, if the proposed amendment to Article VII, section 2 of the state Constitution is approved by the voters at the November 1997 general election.*)
- 84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules.
- 84.52.063 Rural library district levies. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

**84.52.053 Levies by school districts authorized—When—Procedure.** (*Effective December 4, 1997, if the proposed amendment to Article VII, section 2 of the state Constitution is approved by the voters at the November 1997 general election.*) The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of taxes by school districts, when authorized so to do by the voters of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state. Elections for such taxes shall be held in the year in which the levy is made or, in the case of propositions authorizing two-year through four-year levies for maintenance and operation support of a school district, authorizing two-year levies for transportation vehicle funds established in RCW 28A.160.130, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, in the year in which the first annual levy is made: PROVIDED, That once additional tax levies have been authorized for maintenance and operation support of a school district for a two-year through four-year period, no further additional tax levies for maintenance and operation support of the district for that period may be authorized.

A special election may be called and the time therefor fixed by the board of school directors, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no". [1997 c 260 § 1; 1994 c 116 § 1; 1987 1st ex.s. c 2 § 103; 1986 c 133 § 1; 1977 ex.s. c 325 § 3.]

**Contingent effective date—1997 c 260:** "This act takes effect if the proposed amendment to Article VII, section 2 of the state Constitution authorizing school levies for periods not exceeding four years is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [1997 c 260 § 2.]

**Intent—Severability—Effective date—1987 1st ex.s. c 2:** See notes following RCW 84.52.0531.

**Contingent effective date—1986 c 133:** "This act shall take effect on December 15, 1986, if the proposed amendment to Article VII, section 2 of the state Constitution to change the time periods for school levies. House Joint Resolution No. 55, is validly submitted and is approved and ratified by the voters at a general election held in November, 1986. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1986 c 133 § 3.] 1986 House Joint Resolution No. 55 was approved at the November 1986 general election. See Article VII, section 2 and Amendment 79 of the state Constitution.

**Severability—Effective date—1977 ex.s. c 325:** See notes following RCW 84.52.052.

**School district boundary changes:** RCW 84.09.037

**School funds enumerated—Deposits—Uses:** RCW 28A.320.330.

**84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules.** The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) and (c) of this subsection minus (d) of this subsection:

(a) The district's levy base as defined in subsection (3) of this section multiplied by the district's maximum levy percentage as defined in subsection (4) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) For districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (4) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 1998 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) State-wide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (5) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(5) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsection (3) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(6) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(7) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(8) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(9) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section. [1997 c 259 § 2; 1995 1st sp.s. c 11 § 1; 1994 c 116 § 2; 1993 c 465 § 1; 1992 c 49 § 1; 1990 c 33 § 601;

1989 c 141 § 1; 1988 c 252 § 1; 1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1. Prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

**Funding not related to basic education—1997 c 259:** "Funding resulting from this act is for school district activities which supplement or are not related to the state's basic program of education obligation as set forth under Article IX of the state Constitution." [1997 c 259 § 1.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Effective date—1989 c 141:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 141 § 2.]

**Intent—1987 1st ex.s. c 2:** "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a state-wide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for the adoption of a state-wide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching profession, and limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

**Severability—1987 1st ex.s. c 2:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 2 § 213.]

**Effective date—1987 1st ex.s. c 2:** "This act shall take effect September 1, 1987." [1987 1st ex.s. c 2 § 214.]

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

**Severability—1985 c 374:** "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." [1985 c 374 § 3.]

**Effective date—1981 c 264:** "Section 10 of this amendatory act shall become effective for maintenance and operation excess tax levies now or hereafter authorized pursuant to RCW 84.52.053, as now or hereafter amended, for collection in 1982 and thereafter." [1981 c 264 § 11.]

**Severability—1981 c 264:** See note following RCW 28A.545.030.

**Effective date—1979 ex.s. c 172:** "This 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 on September 1, 1979." [1979 ex.s. c 172 § 3.]

**Severability—1979 ex.s. c 172:** "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 ex.s. c 172 § 2.]

**Severability—Effective date—1977 ex.s. c 325:** See notes following RCW 84.52.052.

*Payments to high school districts for educating nonhigh school district students: Chapter 28A.545 RCW.*

*Purposes: RCW 28A.545.030.*

*Rules to effect purposes and implement provisions: RCW 28A.545.110.*

*Superintendent's annual determination of estimated amount due—Process: RCW 28A.545.070.*

**84.52.063 Rural library district levies. (Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.)** A rural library district may impose a regular property tax levy in an amount equal to that which would be produced by a levy of fifty cents per thousand dollars of assessed value multiplied by an equalized assessed valuation, as determined by the department of revenue's indicated county ratio: PROVIDED, That when any county assessor shall find that

the aggregate rate of levy on any property will exceed the limitation set forth in RCW 84.52.043 and 84.52.050, as now or hereafter amended, before recomputing and establishing a consolidated levy in the manner set forth in RCW 84.52.010, the assessor shall first reduce the levy of any rural library district, by such amount as may be necessary, but the levy of any rural library district shall not be reduced to less than fifty cents per thousand dollars against the value of the taxable property, as determined by the county, prior to any further adjustments pursuant to RCW 84.52.010. For purposes of this section "regular property tax levy" shall mean a levy subject to the limitations provided for in Article VII, section 2 of the state Constitution and/or by statute. [1997 c 3 § 125; 1973 1st ex.s. c 195 § 105; 1973 1st ex.s. c 195 § 150; 1970 ex.s. c 92 § 9.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

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

**Intent—Effective date—Application—1970 ex.s. c 92:** See notes following RCW 84.52.010.

## Chapter 84.55

### LIMITATIONS UPON REGULAR PROPERTY TAXES

#### Sections

- 84.55.005 "Regular property taxes" defined. (*Effective unless Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)
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- 84.55.120 Public hearing—Taxing district's revenue sources—Adoption of tax increase by ordinance or resolution. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

**84.55.005 "Regular property taxes" defined.** (*Effective unless Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) As used in this chapter, the term "regular property taxes" has the meaning given it in RCW 84.04.140. [1997 c 393 § 20; 1994 c 301 § 49; 1983 1st ex.s. c 62 § 11.]

**Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62:** See notes following RCW 84.36.473.

**84.55.005 Definitions.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) As used in this chapter:

(1) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce in September of the year before the taxes are payable;

(2) "Limit factor" means:

(a) For taxing districts with a population of less than ten thousand in the calendar year prior to the assessment year, one hundred six percent;

(b) For taxing districts for which a limit factor is authorized under RCW 84.55.0101, the lesser of the limit factor authorized under that section or one hundred six percent;

(c) For all other districts, the lesser of one hundred six percent or one hundred percent plus inflation; and

(3) "Regular property taxes" has the meaning given it in RCW 84.04.140. [1997 c 393 § 20; 1997 c 3 § 201; 1994 c 301 § 49; 1983 1st ex.s. c 62 § 11.]

**Reviser's note:** This section was amended by 1997 c 3 § 201 and by 1997 c 393 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Short title—Intent—Effective dates—Applicability—1983 1st ex.s. c 62:** See notes following RCW 84.36.473.

**84.55.010 Limitations prescribed.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) Except as provided in this chapter, the levy for a taxing district in any year shall be set so that the regular property taxes payable in the following year shall not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the increase in assessed value in that district resulting from new construction, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax levy rate of that district for the preceding year. [1997 c 3 § 202; 1979 ex.s. c 218 § 2; 1973 1st ex.s. c 67 § 1; 1971 ex.s. c 288 § 20.]

**Reviser's note:** Throughout chapter 84.55 RCW the phrase "this 1971 amendatory act" has been changed to "this chapter." "This 1971 amendatory act" [1971 ex.s. c 288] consists of this chapter and RCW 36.21.015, 36.29.015, 84.04.140, 84.10.010, 84.36.370, 84.36.380, 84.40.030, 84.40.0301, 84.40.045, 84.41.030, 84.41.040, 84.48.080, 84.48.085, 84.48.140, 84.52.052, 84.56.020, and 84.69.020, and the repeal of RCW 84.36.128, 84.36.129, and 84.54.010.

**Intent—1997 c 3 §§ 201-207:** "It is the intent of sections 201 through 207 of this act to lower the one hundred six percent limit while still allowing taxing districts to raise revenues in excess of the limit if approved by a majority of the voters as provided in RCW 84.55.050." [1997 c 3 § 208.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Effective date—Applicability—1979 ex.s. c 218:** "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: PROVIDED, That the amendment to RCW 84.55.010 by section 2 of this act shall be effective for 1979 levies for taxes collected in 1980, and for subsequent years." [1979 ex.s. c 218 § 8.]

**84.55.0101 Limit factor—Authorization for taxing district to use one hundred six percent or less—Ordinance or resolution.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) Upon a finding of substantial need, the legislative authority of a taxing district other than the state may provide for the use of a limit factor under this chapter of one hundred six percent or less. In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution under this section. In districts with more than four members, a majority plus one vote must approve an ordinance or resolution under this section. The new limit factor shall be effective for taxes collected in the following year only. [1997 c 3 § 204.]

**Intent—1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**84.55.012 Reduction of property tax levy—Setting amount of future levies.** (1) The state property tax levy for collection in 1996 shall be reduced by 4.7187 percent of the levy amount that would otherwise be allowed under this chapter without regard to this section or any other tax reduction legislation enacted in 1995.

(2) State levies for collection after 1997 shall be set at the amount that would be allowed otherwise under this chapter if the state levies for collection in 1996 and 1997 had been set without the reduction under subsection (1) of this section. [1997 c 2 § 1; 1995 2nd sp.s. c 13 § 2.]

**Application—1997 c 2:** "Section 1 of this act applies to taxes levied for collection in 1997." [1997 c 2 § 3.]

**Effective date—1997 c 2:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [January 30, 1997]." [1997 c 2 § 4.]

**Intent—1995 2nd sp.s. c 13:** "With property valuations continuing to increase, property taxes have been steadily increasing. At the same time, personal incomes have not continued to rise at the same rate. Property taxes are becoming increasingly more difficult to pay. Many residential property owners complain about the overall level of taxes and about the continuing increase in tax from year to year. Taxpayers want property tax relief. The legislature intends to establish an on-going program of state property tax reductions the amount of which is to be determined by the legislature on a yearly basis based on the level of general fund tax revenues." [1995 2nd sp.s. c 13 § 1.]

**84.55.0121 Reduction of property tax levy for collection in 1998.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) The state property tax levy for collection in 1998 shall be reduced by 4.7187 percent of the levy amount that would otherwise be allowed under this chapter without regard to this section. [1997 c 3 § 301.]

**Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

[1997 RCW Supp—page 984]

**84.55.01211 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**84.55.020 Limitation upon first levy for district created from consolidation.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) Notwithstanding the limitation set forth in RCW 84.55.010, the first levy for a taxing district created from consolidation of similar taxing districts shall be set so that the regular property taxes payable in the following year shall not exceed the limit factor multiplied by the sum of the amount of regular property taxes lawfully levied for each component taxing district in the highest of the three most recent years in which such taxes were levied for such district plus the additional dollar amount calculated by multiplying the increase in assessed value in each component district resulting from new construction and improvements to property by the regular property tax rate of each component district for the preceding year. [1997 c 3 § 203; 1971 ex.s. c 288 § 21.]

**Intent—1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Savings—Severability—1971 ex.s. c 288:** See notes following RCW 84.40.030.

**84.55.120 Public hearing—Taxing district's revenue sources—Adoption of tax increase by ordinance or resolution.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*) A taxing district, other than the state, that collects regular levies shall hold a public hearing on revenue sources for the district's following year's current expense budget. The hearing must include consideration of possible increases in property tax revenues and shall be held prior to the time the taxing district levies the taxes or makes the request to have the taxes levied. The county legislative authority, or the taxing district's governing body if the district is a city, town, or other type of district, shall hold the hearing. For purposes of this section, "current expense budget" means that budget which is primarily funded by taxes and charges and reflects the provision of ongoing services. It does not mean the capital, enterprise, or special assessment budgets of cities, towns, counties, or special purpose districts.

If the taxing district is otherwise required to hold a public hearing on its proposed regular tax levy, a single public hearing may be held on this matter.

No increase in property tax revenue, other than that resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, may be authorized by a taxing district, other than the state, except by adoption of a separate ordinance or resolution, pursuant to notice, specifically authorizing the increase in terms of both dollars and percentage. The ordinance or resolution may cover a period of up to two years, but the ordinance shall specifically state for each year the dollar increase and percentage change in the levy from the previous year. [1997 c 3 § 209; 1995 c 251 § 1.]

**Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Chapter 84.56**  
**COLLECTION OF TAXES**

## Sections

- 84.56.240 Cancellation of uncollectible personalty taxes.  
84.56.300 Annual report of collections to county auditor.  
84.56.340 Payment on part of parcel or tract or on undivided interest or fractional interest—Division—Certification—Appeal.

**84.56.240 Cancellation of uncollectible personalty taxes.** If the county treasurer is unable, for the want of goods or chattels whereupon to levy, to collect by distress or otherwise, the taxes, or any part thereof, which may have been assessed upon the personal property of any person or corporation, or an executor or administrator, guardian, receiver, accounting officer, agent or factor, the treasurer shall file with the county legislative authority, on the first day of February following, a list of such taxes, with an affidavit of the treasurer or of the deputy treasurer entrusted with the collection of the taxes, stating that the treasurer had made diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to make or collect the same. The county legislative authority shall cancel such taxes as the county legislative authority is satisfied cannot be collected. [1997 c 393 § 14; 1961 c 15 § 84.56.240. Prior: 1925 ex.s. c 130 § 94; RRS § 11255; prior: 1899 c 141 § 8; 1897 c 71 § 72; 1895 c 176 § 16; 1893 c 124 § 73; 1890 p 562 § 88.]

**84.56.300 Annual report of collections to county auditor.** On the first Monday of February of each year the county treasurer shall balance up the tax rolls as of December 31 of the prior year in the treasurer's hands and with which the treasurer stands charged on the roll accounts of the county auditor. The treasurer shall then report to the county auditor in full the amount of taxes collected and specify the amount collected on each fund. The treasurer shall also report the amount of taxes that remain uncollected and delinquent upon the tax rolls, which, with collections and credits on account of errors and double assessments, should balance the tax rolls as the treasurer stands charged. The treasurer shall then report the amount of collections on account of interest since the taxes became delinquent, and as added to the original amounts when making such collections, and with which the treasurer is now to be charged by the auditor, such reports to be duly verified by affidavit. [1997 c 393 § 15; 1973 1st ex.s. c 45 § 1; 1961 c 15 § 84.56.300. Prior: 1925 ex.s. c 130 § 98; RRS § 11259; prior: 1899 c 141 § 10; 1897 c 71 § 77; 1895 c 176 § 18; 1893 c 124 § 78; 1890 p 565 § 99.]

**84.56.340 Payment on part of parcel or tract or on undivided interest or fractional interest—Division—Certification—Appeal.** Any person desiring to pay taxes upon any part or parts of real property heretofore or hereafter assessed as one parcel, or tract, or upon such person's undivided fractional interest in such a property, may do so by applying to the county assessor, who must carefully investigate and ascertain the relative or proportionate value said part or part interest bears to the whole tract assessed, on which basis the assessment must be divided, and the assessor

shall forthwith certify such proportionate value to the county treasurer: PROVIDED, That excepting when property is being acquired for public use, or where a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise, no segregation of property for tax purposes shall be made under this section unless all delinquent taxes and assessments on the entire tract have been paid in full. The county treasurer, upon receipt of certification, shall duly accept payment and issue receipt on the apportionment certified by the county assessor. In cases where protest is filed to said division appeal shall be made to the county legislative authority at its next regular session for final division, and the county treasurer shall accept and receipt for said taxes as determined and ordered by the county legislative authority. Any person desiring to pay on an undivided interest in any real property may do so by paying to the county treasurer a sum equal to such proportion of the entire taxes charged on the entire tract as interest paid on bears to the whole. [1997 c 393 § 16; 1996 c 153 § 2; 1994 c 301 § 53; 1985 c 395 § 4; 1971 ex.s. c 48 § 1; 1961 c 15 § 84.56.340. Prior: 1939 c 206 § 44; 1933 c 171 § 2; 1925 ex.s. c 130 § 103; RRS § 11264; prior: 1899 c 141 § 11; 1897 c 71 § 82; 1893 c 124 § 87; 1890 p 583 § 134. Formerly RCW 84.56.340 and 84.56.350.]

**Applicability—1996 c 153:** See note following RCW 84.56.020.

**Chapter 84.64**

**LIEN FORECLOSURE**

(Formerly: Certificates of delinquency)

## Sections

- 84.64.320 Tax-title property may be disposed of without bids in certain cases. (*Effective January 1, 1999.*)

**84.64.320 Tax-title property may be disposed of without bids in certain cases. (*Effective January 1, 1999.*)** The county legislative authority may dispose of tax foreclosed property by private negotiation, without a call for bids, for not less than the principal amount of the unpaid taxes in any of the following cases: (1) When the sale is to any governmental agency and for public purposes; (2) when the county legislative authority determines that it is not practical to build on the property due to the physical characteristics of the property or legal restrictions on construction activities on the property; (3) when the property has an assessed value of less than five hundred dollars and the property is sold to an adjoining landowner; or (4) when no acceptable bids were received at the attempted public auction of the property, if the sale is made within six months from the date of the attempted public auction. [1997 c 244 § 2; 1993 c 310 § 2; 1961 c 15 § 84.64.320. Prior: 1947 c 238 § 1; Rem. Supp. 1947 § 11295-1.]

**Effective date—1997 c 244:** See note following RCW 84.36.015.

**Chapter 84.69**

**REFUNDS**

## Sections

- 84.69.020 Grounds for refunds—Determination—Payment—Report.



84.69.100 Refunds shall include interest—Written protests not required—Rate of interest.

**84.69.020 Grounds for refunds—Determination—Payment—Report.** On the order of the county treasurer, ad valorem taxes paid before or after delinquency shall be refunded if they were:

- (1) Paid more than once; or
- (2) Paid as a result of manifest error in description; or
- (3) Paid as a result of a clerical error in extending the tax rolls; or
- (4) Paid as a result of other clerical errors in listing property; or
- (5) Paid with respect to improvements which did not exist on assessment date; or
- (6) Paid under levies or statutes adjudicated to be illegal or unconstitutional; or
- (7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended; or
- (8) Paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person with respect to real property in which the person paying the same has no legal interest; or
- (9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board; or
- (10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: PROVIDED, That the amount refunded under subsections (9) and (10) of this section shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order; or
- (11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: PROVIDED, HOWEVER, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 of the state Constitution equal one percent of the assessed value established by the board;
- (12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: PROVIDED, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding; or
- (13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2); or
- (14) Paid on the basis of an assessed valuation that was reduced under RCW 84.48.065.

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the

property that should properly have been charged with the tax. Any refunds made on delinquent taxes shall include the proportionate amount of interest and penalties paid. The county treasurer may deduct from moneys collected for the benefit of the state's levy, refunds of the state levy including interest on the levy as provided by this section and chapter 84.68 RCW.

The county treasurer of each county shall make all refunds determined to be authorized by this section, and by the first Monday in February of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund. [1997 c 393 § 18; 1996 c 296 § 2; 1994 c 301 § 55; 1991 c 245 § 31; 1989 c 378 § 17; 1981 c 228 § 1; 1975 1st ex.s. c 291 § 21; 1974 ex.s. c 122 § 2; 1972 ex.s. c 126 § 2; 1971 ex.s. c 288 § 14; 1969 ex.s. c 224 § 1; 1961 c 15 § 84.69.020. Prior: 1957 c 120 § 2.]

**Applicability—1981 c 228:** "Section 1(12) of the [this] amendatory act applies to only those taxes which first become due and payable subsequent to January 1, 1981: PROVIDED, HOWEVER, That this section shall not apply to any taxes which were paid under protest and which were timely paid." [1981 c 228 § 4.]

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Purpose—1974 ex.s. c 122:** "The legislature recognizes that the operation of the provisions of RCW 84.52.065 and 84.48.080, providing for adjustments in the county-determined assessed value of property for purposes of the state property tax for schools, may, with respect to certain properties, result in a total regular property tax payment in excess of the one percent limitation provided for in Article 7, section 2 (Amendment 59) of the state Constitution. The primary purpose of this 1974 amendatory act is to provide a procedure for administrative relief in such cases, such relief to be in addition to the presently existing procedure for judicial relief through a refund action provided for in RCW 84.68.020." [1974 ex.s. c 122 § 1.]

**Severability—Savings—1971 ex.s. c 288:** See notes following RCW 84.40.030.

**84.69.100 Refunds shall include interest—Written protests not required—Rate of interest.** Refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 shall include interest from the date of collection of the portion refundable: PROVIDED, That refunds on a state, county, or district wide basis shall not commence to accrue interest until six months following the date of the final order of the court. No written protest by individual taxpayers need to be filed to receive a refund on a state, county, or district wide basis. The rate of interest shall be the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The department of revenue shall adopt this rate of interest by rule. [1997 c 67 § 1; 1989 c 14 § 6; 1987 c 319 § 1; 1973 2nd ex.s. c 5 § 4; 1961 c 15 § 84.69.100. Prior: 1957 c 120 § 10.]

**Application—1997 c 67:** "This act applies to claims made after January 1, 1998." [1997 c 67 § 2.]

**Chapter 84.70**

**DESTROYED PROPERTY—ABATEMENT OR REFUND**

Sections

84.70.010 Reduction in value—Formula—Appeal. (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

**84.70.010 Reduction in value—Formula—Appeal.** (*Effective December 4, 1997, if Referendum Bill No. 47 is approved by the electorate at the November 1997 general election.*)

(1) If, on or before December 31 in any calendar year, any real or personal property placed upon the assessment roll of that year is destroyed in whole or in part, or is in an area that has been declared a disaster area by the governor and has been reduced in value by more than twenty percent as a result of a natural disaster, the assessed value of such property shall be reduced for that year by an amount determined as follows:

(a) First take the assessed value of such taxable property before destruction or reduction in value and deduct therefrom the true and fair value of the remaining property after destruction or reduction in value.

(b) Then divide any amount remaining by the number of days in the year and multiply the quotient by the number of days remaining in the calendar year after the date of the destruction or reduction in value of the property.

(2) No reduction in the assessed value shall be made more than three years after the date of destruction or reduction in value.

(3) The assessor shall make such reduction on his or her own motion; however, the taxpayer may make application for reduction on forms prepared by the department and provided by the assessor. The assessor shall notify the taxpayer of the amount of reduction.

(4) If destroyed property is replaced prior to the valuation dates contained in RCW 36.21.080 and 36.21.090, the total taxable value for that year shall not exceed the value as of the appropriate valuation date in RCW 36.21.080 or 36.21.090, whichever is appropriate.

(5) The taxpayer may appeal the amount of reduction to the county board of equalization within thirty days of notification or July 1st of the year of reduction, whichever is later. The board shall reconvene, if necessary, to hear the appeal. [1997 c 3 § 126; 1994 c 301 § 56; 1987 c 319 § 6; 1981 c 274 § 1; 1975 1st ex.s. c 120 § 2; 1974 ex.s. c 196 § 3.]

**Application—Severability—Part headings not law—Referral to electorate—1997 c 3:** See notes following RCW 84.40.030.

**Severability—1974 ex.s. c 196:** See note following RCW 84.56.020. *Refund of property taxes: Chapter 84.69 RCW.*

**Title 86**

**FLOOD CONTROL**

**Chapters**

**86.26** State participation in flood control maintenance.

**Chapter 86.26**

**STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE**

Sections

86.26.007 Flood control assistance account—Use.

**86.26.007 Flood control assistance account—Use.**

The flood control assistance account is hereby established in the state treasury. At the beginning of the 1997-99 fiscal biennium and each biennium thereafter the state treasurer shall transfer four million dollars from the general fund to the flood control assistance account. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter or, during the 1997-99 fiscal biennium, for transfer to the disaster response account. [1997 c 149 § 914; 1996 c 283 § 903; 1995 2nd sp.s. c 18 § 915; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1996 c 283:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.165.070.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Effective date—1985 c 57:** See note following RCW 18.04.105.

**Title 87**

**IRRIGATION**

**Chapters**

**87.03** Irrigation districts generally.

**Chapter 87.03**

**IRRIGATION DISTRICTS GENERALLY**

Sections

87.03.051 Qualifications of voters and directors—Districts of less than two hundred thousand acres.

87.03.139 Lawful disposal of sewage and waste by others—Immunity.

87.03.435 Construction work—Notice—Bids—Contracts—Bonds.

**87.03.051 Qualifications of voters and directors—Districts of less than two hundred thousand acres.**

In districts with less than two hundred thousand acres, a person eighteen years old, being a citizen of the United States and a resident of the state and who holds title or evidence of title to assessable land in the district or proposed district shall be entitled to vote therein, and to be recognized as an elector. A corporation, general partnership, limited partnership, limited liability company, or other legal entity formed pursuant to the laws of the state of Washington or qualified to do business in the state of Washington owning land in the district shall be recognized as an elector. As used in this section, "entity" means a corporation, general partnership,

limited partnership, limited liability company, or other legal entity formed pursuant to the laws of the state of Washington or qualified to do business in the state of Washington. "Ownership" shall mean the aggregate of all assessable acres owned by an elector, individually or jointly, within one district. Voting rights shall be allocated as follows: Two votes for each five acres of assessable land or fraction thereof. No one ownership may accumulate more than forty-nine percent of the votes in one district. If assessments are on the basis of shares instead of acres, an elector shall be entitled to two votes for each five shares or fraction thereof. The ballots cast for each ownership of land or shares shall be exercised by common agreement between electors or when land is held as community property, the accumulated votes may be divided equally between husband and wife. Except for community property ownership, in the absence of the submission of the common agreement to the secretary of the district at least twenty-four hours before the opening of the polls, the election board shall recognize the first elector to appear on election day as the elector having the authority to cast the ballots for that parcel of land for which there is more than one ownership interest. A majority of the directors shall be residents of the county or counties in which the district is situated and all shall be electors of the district. If more than one elector residing outside the county or counties is voted for as director, only that one who receives the highest number of votes shall be considered in ascertaining the result of the election. An agent of an entity owning land in the district, duly authorized in writing, may vote on behalf of the entity by filing with the election officers his or her instrument of authority. An elector resident in the district shall vote in the precinct in which he or she resides, all others shall vote in the precinct nearest their residence. No director shall be qualified to take or retain office unless the director holds title or evidence of title to land within the district. [1997 c 354 § 1; 1985 c 66 § 2.]

**Severability—1985 c 66:** See note following RCW 87.03.045.

**87.03.139 Lawful disposal of sewage and waste by others—Immunity.** No irrigation district, its directors, officers, employees, or agents operating and maintaining irrigation works for any purpose authorized by law, including the production of food for human consumption and other agricultural and domestic purposes, is liable for damages to persons or property arising from the disposal of sewage and waste discharged by others into the irrigation works pursuant to federal or state statutes, rules, or regulations permitting the discharge. [1997 c 354 § 2.]

**87.03.435 Construction work—Notice—Bids—Contracts—Bonds.** (1) Except as provided in subsections (2) and (3) of this section and RCW 87.03.436, whenever in the construction of the district canal or canals, or other works, or the furnishing of materials therefor, the board of directors shall determine to let a contract or contracts for the doing of the work or the furnishing of the materials, a notice calling for sealed proposals shall be published. The notice shall be published in a newspaper in the county in which the office of the board is situated, and in any other newspaper which may be designated by the board, and for such length of time, not less than once each week for two weeks, as may

be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let the work or the contract for the purchase of materials, either in portions or as a whole, to the lowest responsible bidder, or the board may reject any or all bids and readvertise, or may proceed to construct the work under its own superintendence. All work shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by the board. The board of directors may require bidders submitting bids for the construction or maintenance for any of the works of the district, or for the furnishing of labor or material, to accompany their bids by a deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the bid and a bid shall not be considered unless the deposit is enclosed with it. If the contract is let, then all the bid deposits shall be returned to the unsuccessful bidders. The bid deposit of the successful bidder shall be retained until a contract is entered into for the purchase of the materials or doing of such work, and a bond given to the district in accordance with chapter 39.08 RCW for the performance of the contract. The performance bond shall be conditioned as may be required by law and as may be required by resolution of the board, with good and sufficient sureties satisfactory to the board, payable to the district for its use, for at least twenty-five percent of the contract price. If the successful bidder fails to enter into a contract and furnish the necessary bond within twenty days from the award, exclusive of the day of the award, the bid deposit shall be forfeited to the district and the contract may then be awarded to the second lowest bidder.

(2) The provisions of this section in regard to public bidding shall not apply in cases where the board is authorized to exchange bonds of the district in payment for labor and material.

(3) The provisions of this section do not apply:

(a) In the case of any contract between the district and the United States;

(b) In the case of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board of directors or proclamation of an official designated by the board to act for the board during such emergencies. The resolution or proclamation shall declare the existence of the emergency and recite the facts constituting the emergency; or

(c) To purchases which are clearly and legitimately limited to a single source of supply or to purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation. [1997 c 354 § 3; 1990 c 39 § 1; 1984 c 168 § 3; 1915 c 179 § 17; 1913 c 165 § 18; 1895 c 165 § 21; 1889-90 p 689 § 35; RRS § 7452. Formerly RCW 87.08.020.]

*Official paper for publication:* RCW 87.03.020.

*Public contracts—Contractor's bond:* Chapter 39.08 RCW.

**Title 88**  
**NAVIGATION AND HARBOR**  
**IMPROVEMENTS**

**Chapters**

- 88.02 Vessel registration.**  
**88.12 Regulation of recreational vessels.**

**Chapter 88.02****VESSEL REGISTRATION**

(Formerly: Watercraft registration)

## Sections

- 88.02.030 Exceptions from vessel registration—Rules.  
88.02.055 Refund, collection of erroneous amounts—Penalty for false statement.  
88.02.075 Duplicate certificates—Replacement decals—Surrender of original certificate or decal.  
88.02.189 Vessel registration or vessel dealer registration suspension—Noncompliance with support order—Reissuance.  
88.02.235 Denial of license.

**88.02.030 Exceptions from vessel registration—Rules.** Vessel registration is required under this chapter except for the following:

- (1) Military or public vessels of the United States, except recreational-type public vessels;
- (2) Vessels owned by a state or subdivision thereof, used principally for governmental purposes and clearly identifiable as such;
- (3) Vessels either (a) registered or numbered under the laws of a country other than the United States; or (b) having a valid United States customs service cruising license issued pursuant to 19 C.F.R. Sec. 4.94;
- (4) Vessels that have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. However, a vessel that is validly registered in another state but that is removed to this state for principal use is subject to registration under this chapter. The issuing authority for this state shall recognize the validity of the numbers previously issued for a period of sixty days after arrival in this state;
- (5) Vessels owned by a nonresident if the vessel is located upon the waters of this state exclusively for repairs, alteration, or reconstruction, or any testing related to the repair, alteration, or reconstruction conducted in this state if an employee of the repair, alteration, or construction facility is on board the vessel during any testing: PROVIDED, That any vessel owned by a nonresident is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing for a period longer than sixty days, that the nonresident shall file an affidavit with the department of revenue verifying the vessel is located upon the waters of this state for repair, alteration, reconstruction, or testing and shall continue to file such affidavit every sixty days thereafter, while the vessel is located upon the waters of this state exclusively for repairs, alteration, reconstruction, or testing;
- (6) Vessels equipped with propulsion machinery of less than ten horsepower that:

(a) Are owned by the owner of a vessel for which a valid vessel number has been issued;

(b) Display the number of that numbered vessel followed by the suffix "1" in the manner prescribed by the department; and

(c) Are used as a tender for direct transportation between that vessel and the shore and for no other purpose;

(7) Vessels under sixteen feet in overall length which have no propulsion machinery of any type or which are not used on waters subject to the jurisdiction of the United States or on the high seas beyond the territorial seas for vessels owned in the United States and are powered by propulsion machinery of ten or less horsepower;

(8) Vessels with no propulsion machinery of any type for which the primary mode of propulsion is human power;

(9) Vessels primarily engaged in commerce which have or are required to have a valid marine document as a vessel of the United States. Commercial vessels which the department of revenue determines have the external appearance of vessels which would otherwise be required to register under this chapter, must display decals issued annually by the department of revenue that indicate the vessel's exempt status;

(10) Vessels primarily engaged in commerce which are owned by a resident of a country other than the United States; and

(11) On and after January 1, 1998, vessels owned by a nonresident individual brought into the state for his or her use or enjoyment while temporarily within the state for not more than six months in any continuous twelve-month period, unless the vessel is used in conducting a non-transitory business activity within the state. However, the vessel must (a) be registered or numbered under the laws of a country other than the United States, (b) have a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94, or (c) have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation. On or before the sixty-first day of use in the state, any vessel temporarily in the state under this subsection shall obtain an identification document from the department of licensing, its agents, or subagents indicating when the vessel first came into the state. An identification document shall be valid for a period of two months. At the time of any issuance of an identification document, a twenty-five dollar identification document fee shall be paid by the vessel owner to the department of licensing for the cost of providing the identification document by the department of licensing. Any moneys remaining from the fee after payment of costs shall be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.045. The department of licensing shall adopt rules to implement its duties under this subsection, including issuing and displaying the identification document and collecting the twenty-five dollar fee. [1997 c 83 § 1; 1991 c 339 § 30. Prior: 1989 c 393 § 13; 1989 c 102 § 1; 1985 c 452 § 1; 1984 c 250 § 2; 1983 2nd ex.s. c 3 § 44; 1983 c 7 § 16.]

**Effective date—1985 c 452:** "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, 1985." [1985 c 452 § 2]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

*Commission to adopt rules: RCW 88.12.385.*

*Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 88.02.030(9): RCW 84.36.080.*

**88.02.055 Refund, collection of erroneous amounts—Penalty for false statement.** Whenever any license fee paid under this chapter has been erroneously paid, in whole or in part, the person paying the fee, upon satisfactory proof to the director of licensing, is entitled to a refund of the amount erroneously paid. A license fee is refundable in one or more of the following circumstances: (1) If the vessel for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; (2) if the vessel for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for which the renewal fee was paid; (3) if the vessel license was purchased after the owner has sold the vessel; (4) if the vessel is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or (5) if the vessel for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal decal to the department before the beginning of the registration period for which the registration was purchased. Upon the refund being certified as correct to the state treasurer by the director and being claimed in the time required by law, the state treasurer shall mail or deliver the amount of each refund to the person entitled to the refund. A claim for refund shall not be allowed for erroneous payments unless the claim is filed with the director within three years after such payment was made.

If due to error a person has been required to pay a license fee under this chapter and excise tax which amounts to an overpayment of ten dollars or more, the person is entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect the additional amount as will constitute full payment of the tax and fees.

Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [1997 c 22 § 2; 1996 c 31 § 2; 1989 c 68 § 5.]

**88.02.075 Duplicate certificates—Replacement decals—Surrender of original certificate or decal.** (1) If a certificate of ownership, a certificate of registration, or a pair of decals is lost, stolen, mutilated, or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly apply for and may obtain a duplicate certificate or replacement decals upon payment of one dollar and twenty-

five cents and furnishing information satisfactory to the department.

(a) An application for a duplicate certificate of title shall be accompanied by an affidavit of loss or destruction in a form approved by the department and signed by the first secured party or, if none, the owner or legal representative of the owner.

(b) An application for a duplicate certificate of registration or replacement decals shall be accompanied by an affidavit of loss or destruction in a form approved by the department and signed by the registered owner or legal representative of the owner.

(2) The duplicate certificate of ownership or registration shall contain the legend, "duplicate." It shall be mailed to the first priority secured party named in it or, if none, to the owner.

(3) A person recovering an original certificate of ownership, certificate of registration, or decal for which a duplicate or replacement has been issued shall promptly surrender the original to the department. [1997 c 241 § 12; 1986 c 71 § 1.]

**88.02.189 Vessel registration or vessel dealer registration suspension—Noncompliance with support order—Reissuance.** The department shall immediately suspend the vessel registration or vessel dealer's registration of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the registration shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 863.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**88.02.235 Denial of license.** The director may deny a license under this chapter when the application is a subterfuge that conceals the real person in interest whose license has been denied, suspended, or revoked for cause under this chapter and the terms have not been fulfilled or a civil penalty has not been paid, or the director finds that the application was not filed in good faith. This section does not preclude the department from taking an action against a current licensee. [1997 c 432 § 3.]

## Chapter 88.12

## REGULATION OF RECREATIONAL VESSELS

(Formerly: Regulation of motor boats)

## Sections

- 88.12.010 Definitions.
- 88.12.232 Vessels carrying passengers for hire on whitewater rivers—Whitewater river outfitter's license required. (*Effective January 1, 1998.*)
- 88.12.235 Vessels carrying passengers for hire on whitewater rivers—Conduct constituting misdemeanor.
- 88.12.245 Vessels carrying passengers for hire on whitewater rivers—Safety requirements. (*Effective January 1, 1998.*)
- 88.12.255 Vessels carrying passengers for hire on whitewater rivers—Use of alcohol prohibited—Vessel to be accompanied by vessel with licensed outfitter. (*Effective January 1, 1998.*)
- 88.12.265 Vessels carrying passengers for hire on whitewater rivers—Designation of whitewater river sections.
- 88.12.275 Vessels carrying passengers for hire on whitewater rivers—Whitewater river outfitter's license—Application—Fees—Insurance—Penalties—State immune from civil actions arising from licensure. (*Effective January 1, 1998.*)
- 88.12.276 Vessels carrying passengers for hire on whitewater rivers—Rules to implement RCW 88.12.275—Fees.
- 88.12.278 Vessels carrying passengers for hire on whitewater rivers—License suspension for certain convictions. (*Effective January 1, 1998.*)
- 88.12.279 Designation as whitewater river—Rules—Schedule of fines.

**88.12.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Boat wastes" includes, but is not limited to, sewage, garbage, marine debris, plastics, contaminated bilge water, cleaning solvents, paint scrapings, or discarded petroleum products associated with the use of vessels.

(2) "Boater" means any person on a vessel on waters of the state of Washington.

(3) "Carrying passengers for hire" means carrying passengers in a vessel on waters of the state for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the vessel. This shall not include trips where expenses for food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying passengers shall be considered to be carrying passengers for hire on waters of the state.

(4) "Commission" means the state parks and recreation commission.

(5) "Darkness" means that period between sunset and sunrise.

(6) "Environmentally sensitive area" means a restricted body of water where discharge of untreated sewage from boats is especially detrimental because of limited flushing, shallow water, commercial or recreational shellfish, swimming areas, diversity of species, the absence of other pollution sources, or other characteristics.

(7) "Guide" means any individual, including but not limited to subcontractors and independent contractors, engaged for compensation or other consideration by a whitewater river outfitter for the purpose of operating vessels. A person licensed under RCW 77.32.211 or

75.28.780 and acting as a fishing guide is not considered a guide for the purposes of this chapter.

(8) "Marina" means a facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(9) "Motor driven boats and vessels" means all boats and vessels which are self propelled.

(10) "Muffler" or "muffler system" means a sound suppression device or system, including an underwater exhaust system, designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and that prevents excessive or unusual noise.

(11) "Operate" means to steer, direct, or otherwise have physical control of a vessel that is underway.

(12) "Operator" means an individual who steers, directs, or otherwise has physical control of a vessel that is underway or exercises actual authority to control the person at the helm.

(13) "Observer" means the individual riding in a vessel who is responsible for observing a water skier at all times.

(14) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(15) "Person" means any individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, or other legal entity located within or outside this state.

(16) "Personal flotation device" means a buoyancy device, life preserver, buoyant vest, ring buoy, or buoy cushion that is designed to float a person in the water and that is approved by the commission.

(17) "Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(18) "Polluted area" means a body of water used by boaters that is contaminated by boat wastes at unacceptable levels, based on applicable water quality and shellfish standards.

(19) "Public entities" means all elected or appointed bodies, including tribal governments, responsible for collecting and spending public funds.

(20) "Reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(21) "Sewage pumpout or dump unit" means:

(a) A receiving chamber or tank designed to receive vessel sewage from a "porta-potty" or a portable container; and

(b) A stationary or portable mechanical device on land, a dock, pier, float, barge, vessel, or other location convenient to boaters, designed to remove sewage waste from holding tanks on vessels.

(22) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(23) "Vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being

used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, and small rafts or flotation devices or toys customarily used by swimmers.

(24) "Water skiing" means the physical act of being towed behind a vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or any other similar device.

(25) "Waters of the state" means any waters within the territorial limits of Washington state.

(26) "Whitewater river outfitter" means any person who is advertising to carry or carries passengers for hire on any whitewater river of the state, but does not include any person whose only service on a given trip is providing instruction in canoeing or kayaking skills.

(27) "Whitewater rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of the state as listed in RCW 88.12.265 or as designated by the commission under RCW 88.12.279. [1997 c 391 § 1; 1993 c 244 § 5; 1933 c 72 § 1; RRS § 9851-1.]

**Intent—1993 c 244:** "It is the intent of the legislature that the boating safety laws administered by the state parks and recreation commission provide Washington's citizens with clear and reasonable boating safety regulations and penalties. Therefore, the legislature intends to recodify, clarify, and partially decriminalize the state-wide boating safety laws in order to help the boating community understand and comply with these laws.

It is also the intent of the legislature to increase boat registration fees in order to provide additional funds to local governments for boating safety enforcement and education programs. The funds are to be used for enforcement, education, training, and equipment, including vessel noise measurement equipment. The legislature encourages programs that provide boating safety education in the primary and secondary school system for boat users and potential future boat users. The legislature also encourages boating safety programs that use volunteer and private sector efforts to enhance boating safety and education." [1993 c 244 § 1.]

**88.12.232 Vessels carrying passengers for hire on whitewater rivers—Whitewater river outfitter's license required. (Effective January 1, 1998.)** (1) No person shall act in the capacity of a paid whitewater river outfitter, or advertise in any newspaper or magazine or any other trade publication, or represent himself or herself as a whitewater river outfitter in the state, without first obtaining a whitewater river outfitter's license from the department of licensing in accordance with RCW 88.12.275.

(2) Every whitewater river outfitter's license must, at all times, be conspicuously placed on the premises set forth in the license. [1997 c 391 § 2.]

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** "Sections 2, 4, 5, 7, and 8 of this act take effect January 1, 1998." [1997 c 391 § 12.]

**88.12.235 Vessels carrying passengers for hire on whitewater rivers—Conduct constituting misdemeanor.** Except as provided in RCW 88.12.275, the commission of a prohibited act or the omission of a required act under RCW 88.12.245 through 88.12.275 constitutes a misdemeanor, punishable as provided under RCW 9.92.030. [1997 c 391 § 3; 1993 c 244 § 27.]

**Intent—1993 c 244:** See note following RCW 88.12.010.

**88.12.245 Vessels carrying passengers for hire on whitewater rivers—Safety requirements. (Effective January 1, 1998.)** (1) While carrying passengers for hire on whitewater rivers in this state, the licensed whitewater river

outfitter shall comply with the following requirements at the beginning of every trip:

(a) If using inflatable vessels, use only vessels with three or more separate air chambers;

(b) Ensure that all passengers are wearing a securely fastened United States coast guard-approved type V personal flotation device of the proper size, and that all guides are wearing a securely fastened United States coast guard-approved type III or type V personal flotation device;

(c) Ensure that a spare United States coast guard-approved type III or type V personal flotation device in good repair is accessible to all vessels on each trip;

(d) Ensure that each vessel has on it a bagged throwable line with a floating line and bag;

(e) Ensure that each vessel has accessible an adequate first-aid kit;

(f) Ensure that each vessel has a spare propelling device;

(g) Ensure that a repair kit and air pump are accessible to inflatable vessel;

(h) Ensure that equipment to prevent and treat hypothermia is accessible to all vessels on a trip; and

(i) Ensure that each vessel is operated by a guide who has complied with the requirements of subsection (2) of this section.

(2) No person may act as a guide unless the individual is at least eighteen years of age and has:

(a) Successfully completed a lifesaving training course meeting standards adopted by the commission;

(b) Completed a program of guide training on whitewater rivers, conducted by a guide instructor, which program must run for a minimum of fifty hours on a whitewater river and must include at least the following elements:

(i) Equipment preparation and boat rigging;

(ii) Reading river characteristics including currents, eddies, rapids, and hazards;

(iii) Methods of scouting and running rapids;

(iv) River rescue techniques, including emergency procedures and equipment recovery; and

(v) Communications with clients, including paddling and safety instruction; and

(c) Completed at least one trip on an entire section of whitewater river before carrying passengers for hire in a vessel on any such section of whitewater river.

(3) A guide instructor must have traveled at least one thousand five hundred river miles, seven hundred fifty of which must have been while acting as a guide.

(4) Any person conducting guide training on whitewater rivers shall, upon request of a guide trainee, issue proof of completion to the guide completing the required training program. [1997 c 391 § 4; 1993 c 244 § 30; 1986 c 217 § 6. Formerly RCW 88.12.280, 91.14.050.]

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** See note following RCW 88.12.232.

**Intent—1993 c 244:** See note following RCW 88.12.010

**88.12.255 Vessels carrying passengers for hire on whitewater rivers—Use of alcohol prohibited—Vessel to be accompanied by vessel with licensed outfitter. (Effective January 1, 1998.)** (1) Whitewater river outfitters and



guides on any trip carrying passengers for hire on whitewater rivers of the state shall not allow the use of alcohol during the course of a trip on a whitewater river section in this state.

(2) Any vessel carrying passengers for hire on any whitewater river section in this state must be accompanied by at least one other vessel being operated by a licensed whitewater river outfitter or a guide under the direction or control of a licensed whitewater river outfitter. [1997 c 391 § 5; 1993 c 244 § 31; 1986 c 217 § 7. Formerly RCW 88.12.290, 91.14.060.]

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** See note following RCW 88.12.232.

**Intent—1993 c 244:** See note following RCW 88.12.010.

**88.12.265 Vessels carrying passengers for hire on whitewater rivers—Designation of whitewater river sections.** Whitewater river sections include but are not limited to:

- (1) Green river above Flaming Geyser state park;
- (2) Klickitat river above the confluence with Summit creek;
- (3) Methow river below the town of Carlton;
- (4) Sauk river above the town of Darrington;
- (5) Skagit river above Bacon creek;
- (6) Suiattle river;
- (7) Tieton river below Rimrock dam;
- (8) Skykomish river below Sunset Falls and above the Highway 2 bridge one mile east of the town of Gold Bar;
- (9) Wenatchee river above the Wenatchee county park at the town of Monitor;
- (10) White Salmon river; and
- (11) Any other section of river designated a "whitewater river section" by the commission under RCW 88.12.279. [1997 c 391 § 6; 1986 c 217 § 8. Formerly RCW 88.12.300, 91.14.070.]

**88.12.275 Vessels carrying passengers for hire on whitewater rivers—Whitewater river outfitter's license—Application—Fees—Insurance—Penalties—State immune from civil actions arising from licensure.** (*Effective January 1, 1998.*) (1) The department of licensing shall issue a whitewater river outfitter's license to an applicant who submits a completed application, pays the required fee, and complies with the requirements of this section.

(2) An applicant for a whitewater river outfitter's license shall make application upon a form provided by the department of licensing. The form must be submitted annually and include the following information:

- (a) The name, residence address, and residence telephone number, and the business name, address, and telephone number of the applicant;
- (b) Certification that all employees, subcontractors, or independent contractors hired as guides meet training standards under RCW 88.12.245(2) before carrying any passengers for hire;
- (c) Proof that the applicant has liability insurance for a minimum of three hundred thousand dollars per claim for occurrences by the applicant and the applicant's employees that result in bodily injury or property damage. All guides must be covered by the applicant's insurance policy;

(d) Certification that the applicant will maintain the insurance for a period of not less than one year from the date of issuance of the license; and

(e) Certification by the applicant that for a period of not less than twenty-four months immediately preceding the application the applicant:

(i) Has not had a license, permit, or certificate to carry passengers for hire on a river revoked by another state or by an agency of the government of the United States due to a conviction for a violation of safety or insurance coverage requirements no more stringent than the requirements of this chapter; and

(ii) Has not been denied the right to apply for a license, permit, or certificate to carry passengers for hire on a river by another state.

(3) The department of licensing shall charge a fee for each application, to be set in accordance with RCW 43.24.086.

(4) Any person advertising or representing himself or herself as a whitewater river outfitter who is not currently licensed is guilty of a gross misdemeanor.

(5) The department of licensing shall submit annually a list of licensed persons and companies to the department of community, trade, and economic development, tourism promotion division.

(6) If an insurance company cancels or refuses to renew insurance for a licensee, the insurance company shall notify the department of licensing in writing of the termination of coverage and its effective date not less than thirty days before the effective date of termination.

(a) Upon receipt of an insurance company termination notice, the department of licensing shall send written notice to the licensee that on the effective date of termination the department of licensing will suspend the license unless proof of insurance as required by this section is filed with the department of licensing before the effective date of the termination.

(b) If an insurance company fails to give notice of coverage termination, this failure shall not have the effect of continuing the coverage.

(c) The department of licensing may suspend a license under this section if the licensee fails to maintain in full force and effect the insurance required by this section.

(7) The state of Washington shall be immune from any civil action arising from the issuance of a license under this section. [1997 c 391 § 7; 1995 c 399 § 216; 1986 c 217 § 11. Formerly RCW 88.12.320, 91.14.090.]

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** See note following RCW 88.12.232.

**88.12.276 Vessels carrying passengers for hire on whitewater rivers—Rules to implement RCW 88.12.275—Fees.** The department of licensing may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to implement RCW 88.12.275. The fees must approximate the cost of administration. The fees must be deposited in the master license account. [1997 c 391 § 9.]

**88.12.278 Vessels carrying passengers for hire on whitewater rivers—License suspension for certain**

**convictions.** (*Effective January 1, 1998.*) Within five days after conviction for any of the provisions of RCW 88.12.245 through 88.12.275, the court shall forward a copy of the judgment to the department of licensing. After receiving proof of conviction, the department of licensing may suspend the license of any whitewater river outfitter for a period not to exceed one year or until proof of compliance with all licensing requirements and correction of the violation under which the whitewater river outfitter was convicted. [1997 c 391 § 8.]

**Effective date—**1997 c 391 §§ 2, 4, 5, 7, and 8: See note following RCW 88.12.232.

**88.12.279 Designation as whitewater river—Rules—Schedule of fines.** The commission shall adopt rules that designate as whitewater rivers all sections of rivers with at least one class III rapid or greater, as described in the American Whitewater Affiliation's whitewater safety code. The commission is authorized to consider the imposition of a schedule of fines for minor violations. [1997 c 391 § 10.]

## Title 89

### RECLAMATION, SOIL CONSERVATION, AND LAND SETTLEMENT

#### Chapters

**89.08 Conservation districts.**

#### Chapter 89.08

##### CONSERVATION DISTRICTS

#### Sections

**89.08.440** Best management practices for fish and wildlife habitat, water quality, and water quantity property tax exemption—List—Forms—Certification of claims.

**89.08.440 Best management practices for fish and wildlife habitat, water quality, and water quantity property tax exemption—List—Forms—Certification of claims.** (1) For the purpose of identifying property that may qualify for the exemption provided under RCW 84.36.255, each conservation district shall develop and maintain a list of best management practices that qualify for the exemption.

(2) Each conservation district shall ensure that the appropriate forms approved by the department of revenue are made available to property owners who may qualify for the exemption under RCW 84.36.255 and shall certify claims for exemption as provided in RCW 84.36.255(3). [1997 c 295 § 3.]

**Purpose—**1997 c 295: See note following RCW 84.36.255.

## Title 90

### WATER RIGHTS—ENVIRONMENT

#### Chapters

**90.03 Water code.**

[1997 RCW Supp—page 994]

**90.14 Water rights—Registration—Waiver and relinquishment, etc.**  
**90.22 Minimum water flows and levels.**  
**90.44 Regulation of public ground waters.**  
**90.46 Reclaimed water use.**  
**90.48 Water pollution control.**  
**90.52 Pollution disclosure act of 1971.**  
**90.54 Water resources act of 1971.**  
**90.56 Oil and hazardous substance spill prevention and response.**  
**90.58 Shoreline management act of 1971.**  
**90.60 Environmental permit assistance.**  
**90.64 Dairy waste management.**  
**90.71 Puget Sound water quality protection.**  
**90.72 Shellfish protection districts.**  
**90.74 Aquatic resources mitigation.**  
**90.80 Water conservancy boards.**  
**90.82 Water resource management.**

#### Chapter 90.03

##### WATER CODE

#### Sections

**90.03.105** Petition by planning units for general adjudication.  
**90.03.252** Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable.  
**90.03.255** Applications for water right, transfer, or change—Consideration of water impoundment or other resource management technique.  
**90.03.320** Appropriation procedure—Construction work.  
**90.03.380** Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another.

**90.03.105 Petition by planning units for general adjudication.** The legislature finds that the lack of certainty regarding water rights within a water resource basin may impede management and planning for water resources. The legislature further finds that planning units conducting water resource planning under chapter 90.82 RCW may find that the certainty provided by a general adjudication of water rights under this chapter is required for water planning or water management in a water resource inventory area or in a portion of the area. Therefore, such planning units may petition the department to conduct such a general adjudication and the department shall give high priority to such a request in initiating any such general adjudications under this chapter. [1997 c 442 § 301.]

**Part headings not law—Severability—**1997 c 442: See RCW 90.82.900 and 90.82.901.

**90.03.252 Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable.** The permit requirements of RCW 90.03.250 do not apply to the use of reclaimed water by the owner of a wastewater treatment facility under the provisions of RCW 90.46.120. [1997 c 444 § 2.]

**Severability—**1997 c 444: See note following RCW 90.46.010.

**90.03.255 Applications for water right, transfer, or change—Consideration of water impoundment or other resource management technique.** The department shall,

when evaluating an application for a water right, transfer, or change filed pursuant to RCW 90.03.250 or 90.03.380 that includes provision for any water impoundment or other resource management technique, take into consideration the benefits and costs, including environmental effects, of any water impoundment or other resource management technique that is included as a component of the application. The department's consideration shall extend to any increased water supply that results from the impoundment or other resource management technique, including but not limited to any recharge of ground water that may occur, as a means of making water available or otherwise offsetting the impact of the diversion of surface water proposed in the application for the water right, transfer, or change. Provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not otherwise be made by the department as a condition for approving an application that does not include such provision.

This section does not lessen, enlarge, or modify the rights of any riparian owner, or any existing water right acquired by appropriation or otherwise. [1997 c 360 § 2; 1996 c 306 § 1.]

**Findings—Purpose—1997 c 360:** "The legislature finds that in many basins in the state there is water available on a seasonal basis that is in excess of the needs of either existing water right holders or instream resources. The legislature finds that excess waters often result in significant flooding and damage to public and private resources. Further, it is in the public interest to encourage the impoundment of excess water and other measures that can be used to offset the impact of withdrawals and diversions on existing rights and instream resources. Further, in some areas of the state additional supplies of water are needed to meet the needs of a growing economy and population. The legislature finds there is a range of alternatives that offset the impacts that should be encouraged including the creation, restoration, enhancement, or enlargement of ponds, wetlands, and reservoirs and the artificial recharge of aquifers.

The purpose of this act is to foster the improvement in the water supplies available to meet the needs of the state. It is the goal of this act to strengthen the state's economy while maintaining and improving the overall quality of the state's environment." [1997 c 360 § 1.]

**90.03.320 Appropriation procedure—Construction work.** Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the department, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the department. The department, in fixing the time for the commencement of the work, or for the completion thereof and the application of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected; and, for good cause shown, it shall extend the time or times fixed as aforesaid, and shall grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. In fixing construction schedules and the time, or extension of time, for application of water to beneficial use for municipal water supply purposes, the department shall also take into consideration the term and amount of financing required to complete the project, delays that may result

from planned and existing conservation and water use efficiency measures implemented by the public water system, and the supply needs of the public water system's service area, consistent with an approved comprehensive plan under chapter 36.70A RCW, or in the absence of such a plan, a county-approved comprehensive plan under chapter 36.70 RCW or a plan approved under chapter 35.63 RCW, and related water demand projections prepared by public water systems in accordance with state law. An existing comprehensive plan under chapter 36.70A or 36.70 RCW, plan under chapter 35.63 RCW, or demand projection may be used. If the terms of the permit or extension thereof, are not complied with the department shall give notice by registered mail that such permit will be canceled unless the holders thereof shall show cause within sixty days why the same should not be so canceled. If cause is not shown, the permit shall be canceled. [1997 c 445 § 3; 1987 c 109 § 67; 1917 c 117 § 33; RRS § 7385. Formerly RCW 90.20.090.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another.** (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the

department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070. [1997 c 442 § 801; 1996 c 320 § 19; 1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

**Part headings not law—Severability—1997 c 442:** See RCW 90.82.900 and 90.82.901.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Application to Yakima river basin trust water rights:* RCW 90.38.040.

## Chapter 90.14

### WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

#### Sections

- 90.14.041 Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.  
 90.14.068 Statement of claim—New filing period.  
 90.14.071 Failure to file claim waives and relinquishes right.

**90.14.041 Claim of right to withdraw, divert or use ground or surface waters—Filing statement of claim required—Exemptions.** All persons using or claiming the right to withdraw or divert and make beneficial use of public surface or ground waters of the state, except as provided in this section, RCW 90.14.043, and 90.14.068, shall file with the department of ecology not later than June 30, 1974, a statement of claim for each water right asserted on a form provided by the department. Neither this section nor RCW 90.14.068 apply to any water rights which are based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors. Further, RCW 90.14.068 does not apply to the beneficial uses of water which are the subject of statements of claim in the water rights claims registry prior to September 1, 1997, or which are exempted from permit and application requirements by RCW 90.44.050 and neither this section nor RCW 90.14.068 requires that statements of claims for such uses be filed during the filing period established by RCW 90.14.068. [1997 c 440 § 2; 1988 c 127 § 73; 1969 ex.s. c 284 § 13.]

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

[1997 RCW Supp—page 996]

#### 90.14.068 Statement of claim—New filing period.

(1) A new period for filing statements of claim for water rights is established. The filing period shall begin September 1, 1997, and shall end at midnight June 30, 1998. Each person or entity claiming under state law a right to withdraw or divert and beneficially use surface water under a right that was established before \*the effective date of water code established by chapter 117, Laws of 1917, and any person claiming under state law a right to withdraw and beneficially use ground water under a right that was established before \*\*the effective date of the ground water code established by chapter 263, Laws of 1945, shall register the claim with the department during the filing period unless the claim has been filed in the state water rights claims registry before July 27, 1997. A person who claims such a right and fails to register the claim as required is conclusively deemed to have waived and relinquished any right, title, or interest in the right. A statement filed during this filing period shall be filed as provided in RCW 90.14.051 and 90.14.061 and shall be subject to the provisions of this chapter regarding statements of claim. This reopening of the period for filing statements of claim shall not affect or impair in any respect whatsoever any water right existing prior to July 27, 1997. A water right embodied in a statement of claim filed under this section is subordinate to any water right embodied in a permit or certificate issued under chapter 90.03 or 90.44 RCW prior to the date the statement of claim is filed with the department and is subordinate to any water right embodied in a statement of claim filed in the water rights claims registry before July 27, 1997.

(2) The department of ecology shall, at least once each week during the month of August 1997 and at least once each month during the filing period, publish a notice regarding this new filing period in newspapers of general circulation in the various regions of the state. The notice shall contain the substance of the following notice:

#### WATER RIGHTS NOTICE

Each person or entity claiming a right to withdraw or divert and beneficially use surface water under a right that was established before June 7, 1917, or claiming a right to withdraw and beneficially use ground water under a right that was established before June 7, 1945, under the laws of the state of Washington must register the claim with the department of ecology, Olympia, Washington. The claim must be registered on or after September 1, 1997, and not later than five o'clock on June 30, 1998.

#### FAILURE TO REGISTER THE CLAIM WILL RESULT IN A WAIVER AND RELINQUISHMENT OF THE WATER RIGHT OR CLAIMED WATER RIGHT

Registering a claim is NOT required for:

1. A water right that is based on the authority of a permit or certificate issued by the department of ecology or one of its predecessors;
2. A water right that is based on the exemption from permitting requirements provided by RCW 90.44.050 for certain very limited uses of ground water; or

3. A water right that is based on a statement of claim that has previously been filed in the state's water rights claims registry during other registration periods.

For further information, for a copy of the law establishing this filing period, and for an explanation of the law and its requirements, contact the department of ecology, Olympia, Washington.

The department shall also prepare, make available to the public, and distribute to the communications media information describing the types of rights for which statements of claim need not be filed, the effect of filing, the effect of RCW 90.14.071, and other information relevant to filings and statements of claim.

(3) The department of ecology shall ensure that employees of the department are readily available to respond to inquiries regarding filing statements of claim and that all of the information the department has at its disposal that is relevant to an inquiry regarding a particular potential claim, including information regarding other rights and claims in the vicinity of the potentially claimed right, is available to the person making the inquiry. The department shall dedicate additional staff in each of the department's regional offices and in the department's central office to ensure that responses and information are provided in a timely manner during each of the business days during the month of August 1997 and during the new filing period.

(4) To assist the department in avoiding unnecessary duplication, the department shall provide to a requestor, within ten working days of receiving the request, the records of any water right claimed, listed, recorded, or otherwise existing in the records of the department or its predecessor agencies, including any report of a referee in a water rights adjudication. This information shall be provided as required by this subsection if the request is provided in writing from the owner of the water right or from the holder of a possessory interest in any real property for water right records associated with the property or if the requestor is an attorney for such an owner. The information regarding water rights in the area served by a regional office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's regional office. The information held by the headquarters office of the department shall also be provided within ten working days to any requestor who requests to review the information in person in the department's headquarters office. The requirements of this subsection that records and information be provided to requestors within ten working days may not be construed as limiting in any manner the obligations of the department to provide public access to public records as required by chapter 42.17 RCW.

(5) This section does not apply to claims for the use of ground water withdrawn in an area that is, during the period established by subsection (2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to ground water rights. This section does not apply to claims for the use of surface water withdrawn in an area that is, during the period established by subsection

(2) of this section, the subject of a general adjudication proceeding for water rights in superior court under RCW 90.03.110 through 90.03.245 and the proceeding applies to surface water rights.

(6) This section does not apply to claims for the use of water in a ground water area or subarea for which a management program adopted by the department by rule and in effect on July 27, 1997, establishes acreage expansion limitations for the use of ground water. [1997 c 440 § 1.]

**Reviser's note:** \*(1) The effective date of chapter 117, Laws of 1917, is June 7, 1917.

\*\*\*(2) The effective date of chapter 263, Laws of 1945, is June 7, 1945.

**90.14.071 Failure to file claim waives and relinquishes right.** Except as provided in \*section 5 of this act or as exempted from filing by RCW 90.14.041, any person claiming the right to divert or withdraw waters of the state as set forth in RCW 90.14.041, who fails to file a statement of claim as provided in RCW 90.14.041, 90.14.043, or 90.14.068 and in RCW 90.14.051 and 90.14.061, shall be conclusively deemed to have waived and relinquished any right, title, or interest in said right. [1997 c 440 § 3; 1969 ex.s. c 284 § 16.]

**\*Reviser's note:** Section 5 of this act was vetoed by the governor.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

## Chapter 90.22

### MINIMUM WATER FLOWS AND LEVELS

#### Sections

90.22.010 Establishment of minimum water flows or levels—  
Authorized—Purposes.

**90.22.010 Establishment of minimum water flows or levels—Authorized—Purposes.** The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall, when requested by the department of fish and wildlife to protect fish, game or other wildlife resources under the jurisdiction of the requesting state agency, or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality described in the request or determination. Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level. When the department acts to preserve water quality, it shall include a similar statement with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder. [1997 c 32 § 4; 1994 c 264 § 86; 1988 c 47 § 6. Prior: 1987 c 506 § 96; 1987 c 109 § 103; 1969 ex.s. c 284 § 3.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

## Chapter 90.44

### REGULATION OF PUBLIC GROUND WATERS

#### Sections

- 90.44.055 Applications for water right or amendment—Consideration of water impoundment or other resource management technique.
- 90.44.062 Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable.
- 90.44.100 Amendment to permit or certificate—Replacement or new additional wells.
- 90.44.105 Amendment to permit or certificate—Consolidation of rights for exempt wells.

**90.44.055 Applications for water right or amendment—Consideration of water impoundment or other resource management technique.** The department shall, when evaluating an application for a water right or an amendment filed pursuant to RCW 90.44.050 or 90.44.100 that includes provision for any water impoundment or other resource management technique, take into consideration the benefits and costs, including environmental effects, of any water impoundment or other resource management technique that is included as a component of the application. The department's consideration shall extend to any increased water supply that results from the impoundment or other resource management technique, including but not limited to any recharge of ground water that may occur, as a means of making water available or otherwise offsetting the impact of the withdrawal of ground water proposed in the application for the water right or amendment in the same water resource inventory area. Provision for an impoundment or other resource management technique in an application shall be made solely at the discretion of the applicant and shall not be made by the department as a condition for approving an application that does not include such provision.

This section does not lessen, enlarge, or modify the rights of any riparian owner, or any existing water right acquired by appropriation or otherwise. [1997 c 360 § 3; 1996 c 306 § 2.]

**Findings—Purpose—1997 c 360:** See note following RCW 90.03.255.

**90.44.062 Use of reclaimed water by wastewater treatment facility—Permit requirements inapplicable.** The permit requirements of RCW 90.44.060 do not apply to the use of reclaimed water by the owner of a wastewater treatment facility under the provisions of RCW 90.46.120. [1997 c 444 § 3.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.44.100 Amendment to permit or certificate—Replacement or new additional wells.** (1) After an application to, and upon the issuance by the department of

an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.

(2) An amendment to construct replacement or a new additional well or wells at a location outside of the location of the original well or wells or to change the manner or place of use of the water shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (a) The additional or replacement well or wells shall tap the same body of public ground water as the original well or wells; (b) where a replacement well or wells is approved, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) where an additional well or wells is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (d) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

(3) The construction of a replacement or new additional well or wells at the location of the original well or wells shall be allowed without application to the department for an amendment. However, the following apply to such a replacement or new additional well: (a) The well shall tap the same body of public ground water as the original well or wells; (b) if a replacement well is constructed, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) if a new additional well is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original water use permit or certificate; (d) the construction and use of the well shall not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells; (e) the replacement or additional well shall be located no closer than the original well to a well it might interfere with; (f) the department may specify an approved manner of construction of the well; and (g) the department shall require a showing of compliance with the conditions of this subsection (3).

(4) As used in this section, the "location of the original well or wells" is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well. [1997 c 316 § 2; 1987 c 109 § 113; 1945 c 263 § 10; Rem. Supp. 1945 § 7400-10.]

**Intent—1997 c 316:** "The legislature intends that the holder of a valid permit or certificate of ground water right be permitted by the department of ecology to amend a valid permit or certificate to allow full and complete development of the valid right by the construction of replacement or additional wells at the original location or new locations." [1997 c 316 § 1.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**90.44.105 Amendment to permit or certificate—Consolidation of rights for exempt wells.** Upon the issuance by the department of an amendment to the appropriate permit or certificate of ground water right, the holder of a valid right to withdraw public ground waters may consolidate that right with a ground water right exempt from the permit requirement under RCW 90.44.050, without affecting the priority of either of the water rights being consolidated. Such a consolidation amendment shall be issued only after publication of a notice of the application, a comment period, and a determination made by the department, in lieu of meeting the conditions required for an amendment under RCW 90.44.100, that: (1) The exempt well taps the same body of public ground water as the well to which the water right of the exempt well is to be consolidated; (2) use of the exempt well shall be discontinued upon approval of the consolidation amendment to the permit or certificate; (3) legally enforceable agreements have been entered to prohibit the construction of another exempt well to serve the area previously served by the exempt well to be discontinued, and such agreements are binding upon subsequent owners of the land through appropriate binding limitations on the title to the land; (4) the exempt well or wells the use of which is to be discontinued will be properly decommissioned in accordance with chapter 18.104 RCW and the rules of the department; and (5) other existing rights, including ground and surface water rights and minimum stream flows adopted by rule, shall not be impaired. The notice shall be published by the applicant in a newspaper of general circulation in the county or counties in which the wells for the rights to be consolidated are located once a week for two consecutive weeks. The applicant shall provide evidence of the publication of the notice to the department. The comment period shall be for thirty days beginning on the date the second notice is published.

The amount of the water to be added to the holder's permit or certificate upon discontinuance of the exempt well shall be the average withdrawal from the well, in gallons per day, for the most recent five-year period preceding the date of the application, except that the amount shall not be less than eight hundred gallons per day for each residential connection or such alternative minimum amount as may be established by the department in consultation with the department of health, and shall not exceed five thousand gallons per day. The department shall presume that an amount identified by the applicant as being the average withdrawal from the well during the most recent five-year period is accurate if the applicant establishes that the amount identified for the use or uses of water from the exempt well is consistent with the average amount of water used for similar use or uses in the general area in which the exempt well is located. The department shall develop, in consultation with the department of health, a schedule of average household and small-area landscaping water usages in various regions of the state to aid the department and applicants in identifying average amounts used for these purposes. The presumption does not apply if the department finds credible evidence of nonuse of the well during the required period or credible evidence that the use of water

from the exempt well or the intensity of the use of the land supported by water from the exempt well is substantially different than such uses in the general area in which the exempt well is located. The department shall also accord a presumption in favor of approval of such consolidation if the requirements of this subsection are met and the discontinuance of the exempt well is consistent with an adopted coordinated water system plan under chapter 70.116 RCW, an adopted comprehensive land use plan under chapter 36.70A RCW, or other comprehensive watershed management plan applicable to the area containing an objective of decreasing the number of existing and newly developed small ground water withdrawal wells. The department shall provide a priority to reviewing and deciding upon applications subject to this subsection, and shall make its decision within sixty days of the end of the comment period following publication of the notice by the applicant or within sixty days of the date on which compliance with the state environmental policy act, chapter 43.21C RCW, is completed, whichever is later. The applicant and the department may by prior mutual agreement extend the time for making a decision. [1997 c 446 § 1.]

## Chapter 90.46 RECLAIMED WATER USE

### Sections

- 90.46.005 Findings—Coordination of efforts—Development of facilities encouraged.
- 90.46.010 Definitions.
- 90.46.080 Use of reclaimed water for surface percolation—  
Establishment of discharge limit for contaminants.
- 90.46.090 Use of reclaimed water for discharge into constructed beneficial use wetlands and constructed treatment wetlands—  
Standards for discharge.
- 90.46.110 Reclaimed water demonstration program—Demonstration projects.
- 90.46.120 Use of water from wastewater treatment facility—  
Consideration in regional water supply plan or potable water supply service planning.
- 90.46.130 Impairment of water rights downstream from freshwater discharge points.
- 90.46.140 Greywater reuse—Standards, procedures, and guidelines—  
Rules.

**90.46.005 Findings—Coordination of efforts—Development of facilities encouraged.** The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the use of reclaimed water as soon as is practicable, the legislature encourages the cooperative efforts of the public and private sectors and the use of pilot projects to effectuate the goals of this chapter. The legislature further directs the department of health and the department of ecology to coordinate efforts towards developing an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface



and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations.

The legislature further finds and declares that the use of reclaimed water is not inconsistent with the policy of antidegradation of state waters announced in other state statutes, including the water pollution control act, chapter 90.48 RCW and the water resources act, chapter 90.54 RCW.

The legislature finds that other states, including California, Florida, and Arizona, have successfully used reclaimed water to supplement existing water supplies without threatening existing resources or public health.

It is the intent of the legislature that the department of ecology and the department of health undertake the necessary steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

The legislature further finds and declares that reclaimed water facilities are water pollution control facilities as defined in chapter 70.146 RCW and are eligible for financial assistance as provided in chapter 70.146 RCW. The legislature finds that funding demonstration projects will ensure the future use of reclaimed water. The demonstration projects in RCW 90.46.110 are varied in nature and will provide the experience necessary to test different facets of the standards and refine a variety of technologies so that water purveyors can begin to use reclaimed water technology in a more cost-effective manner. This is especially critical in smaller cities and communities where the feasibility for such projects is great, but there are scarce resources to develop the necessary facilities. [1997 c 355 § 1; 1995 c 342 § 1; 1992 c 204 § 1.]

**Construction—1995 c 342:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 342 § 10]

**Effective date—1995 c 342:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 342 § 11.]

**90.46.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Greywater" means wastewater having the consistency and strength of residential domestic type wastewater. Greywater includes wastewater from sinks, showers, and laundry fixtures, but does not include toilet or urinal waters.

(2) "Land application" means application of treated effluent for purposes of irrigation or landscape enhancement for residential, business, and governmental purposes.

(3) "Person" means any state, individual, public or private corporation, political subdivision, governmental subdivision, governmental agency, municipality, copartnership, association, firm, trust estate, or any other legal entity whatever.

(4) "Reclaimed water" means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for a beneficial use or a controlled use that would not otherwise occur and is no longer considered wastewater.

(5) "Sewage" means water-carried human wastes from residences, buildings, industrial and commercial establishments, or other places, together with such ground water infiltration, surface waters, or industrial wastewater as may be present.

(6) "User" means any person who uses reclaimed water.

(7) "Wastewater" means water and wastes discharged from homes, businesses, and industry to the sewer system.

(8) "Beneficial use" means the use of reclaimed water, that has been transported from the point of production to the point of use without an intervening discharge to the waters of the state, for a beneficial purpose.

(9) "Direct recharge" means the controlled subsurface addition of water directly to the ground water basin that results in the replenishment of ground water.

(10) "Ground water recharge criteria" means the contaminant criteria found in the drinking water quality standards adopted by the state board of health pursuant to chapter 43.20 RCW and the department of health pursuant to chapter 70.119A RCW.

(11) "Planned ground water recharge project" means any reclaimed water project designed for the purpose of recharging ground water, via direct recharge or surface percolation.

(12) "Reclamation criteria" means the criteria set forth in the water reclamation and reuse interim standards and subsequent revisions adopted by the department of ecology and the department of health.

(13) "Streamflow augmentation" means the discharge of reclaimed water to rivers and streams of the state or other surface water bodies, but not wetlands.

(14) "Surface percolation" means the controlled application of water to the ground surface for the purpose of replenishing ground water.

(15) "Wetland or wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands regulated under this chapter shall be delineated in accordance with the manual adopted by the department of ecology pursuant to RCW 90.58.380.

(16) "Constructed beneficial use wetlands" means those wetlands intentionally constructed on nonwetland sites to produce or replace natural wetland functions and values. Constructed beneficial use wetlands are considered "waters of the state."

(17) "Constructed treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or storm water treatment. Constructed treatment wetlands are

considered part of the collection and treatment system and are not considered "waters of the state." [1997 c 444 § 5; 1995 c 342 § 2; 1992 c 204 § 2.]

**Severability—1997 c 444:** "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." [1997 c 444 § 11.]

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.080 Use of reclaimed water for surface percolation—Establishment of discharge limit for contaminants.** (1) Reclaimed water may be beneficially used for surface percolation provided the reclaimed water meets the ground water recharge criteria as measured in ground water beneath or down gradient of the recharge project site, and has been incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) If the state ground water recharge criteria as defined by RCW 90.46.010 do not contain a standard for a constituent or contaminant, the department of ecology shall establish a discharge limit consistent with the goals of this chapter.

(3) Reclaimed water that does not meet the ground water recharge criteria may be beneficially used for surface percolation where the department of ecology, in consultation with the department of health, has specifically authorized such use at such lower standard. [1997 c 444 § 6; 1995 c 342 § 3.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.090 Use of reclaimed water for discharge into constructed beneficial use wetlands and constructed treatment wetlands—Standards for discharge.** (1) Reclaimed water may be beneficially used for discharge into constructed beneficial use wetlands and constructed treatment wetlands provided the reclaimed water meets the class A or B reclaimed water standards as defined in the reclamation criteria, and the discharge is incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) Reclaimed water that does not meet the class A or B reclaimed water standards may be beneficially used for discharge into constructed treatment wetlands where the department of ecology, in consultation with the department of health, has specifically authorized such use at such lower standards.

(3) The department of ecology and the department of health must develop appropriate standards for discharging reclaimed water into constructed beneficial use wetlands and constructed treatment wetlands. These standards must be considered as part of the approval process under subsections (1) and (2) of this section. [1997 c 444 § 7; 1995 c 342 § 4.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**Construction—Effective date—1995 c 342:** See notes following RCW 90.46.005.

**90.46.110 Reclaimed water demonstration program—Demonstration projects.** (1) The department of ecology shall establish and administer a reclaimed water demonstration program for the purposes of funding and monitoring the progress of five demonstration projects. The department shall work in cooperation with the department of health.

(2) The five demonstration projects will be:

(a) The city of Ephrata, to use class A reclaimed water for surface spreading that will recharge the groundwater and reduce the nitrate concentrations that currently exceed drinking water standards in domestic wells;

(b) Lincoln county, for a study of the use of reclaimed water to transport twenty-two million gallons a day from Spokane to water sources that will rehydrate and restore long depleted streambeds;

(c) The city of Royal City to replace an interim emergency sprayfield by using one hundred percent of its discharge as class A reclaimed water to enhance local wetlands and lakes in the winter, and potentially irrigate a golf course;

(d) The city of Sequim to implement a tertiary treatment system and reuse one hundred percent of the city's wastewater to reopen an existing shellfish closure area to benefit state and tribal resources, improve streamflows in the Dungeness river, and provide a sustainable water supply for irrigation purposes;

(e) The city of Yelm to use one hundred percent of its wastewater to provide alternative water supply for irrigation and industrial uses in order to offset increased demand for water supply, to protect the Nisqually river chum salmon runs, and to develop experimental artificial wetlands to test low cost treatment options.

(3) By September 30, 1997, the department of ecology shall enter into a grant agreement with the demonstration project jurisdictions that includes reporting requirements, timelines, and a fund disbursement schedule based on the agreed project milestones.

(4) Upon completion of the projects, the department of ecology shall report to the appropriate committees of the legislature on the results of the program.

(5) Demonstration projects which will discharge or otherwise deliver reclaimed water to federal reclamation project facilities or irrigation district facilities shall meet the requirements of the facilities' operating entity for such discharges or deliveries.

(6) No irrigation district, its directors, officers, employees, or agents operating and maintaining irrigation works for any purpose authorized by law, including the production of food for human consumption and other agricultural and domestic purposes, is liable for damages to persons or property arising from the implementation of the demonstration projects in this section. [1997 c 355 § 2.]

**90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply service planning.** The owner of a wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the wastewater treatment facility. Use and distribution of the reclaimed water by the

owner of the wastewater treatment facility is exempt from the permit requirements of RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water facility shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of system-wide funding.

If the proposed use or uses of reclaimed water are intended to augment or replace potable water supplies or create the potential for the development of additional potable water supplies, such use or uses shall be considered in the development of the regional water supply plan or plans addressing potable water supply service by multiple water purveyors. The owner of a wastewater treatment facility that proposes to reclaim water shall be included as a participant in the development of such regional water supply plan or plans. [1997 c 444 § 1.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.46.130 Impairment of water rights downstream from freshwater discharge points.** Facilities that reclaim water under this chapter shall not impair any existing water right downstream from any freshwater discharge points of such facilities unless compensation or mitigation for such impairment is agreed to by the holder of the affected water right. [1997 c 444 § 4.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.46.140 Greywater reuse—Standards, procedures, and guidelines—Rules.** (1) The department of health shall develop standards, procedures, and guidelines for the reuse of greywater, consistent with RCW 43.20.230(2), by January 1, 1998.

(2) Standards, procedures, and guidelines developed by the department of health for reuse of greywater shall encourage the application of this technology for conserving water resources, or reducing the wastewater load, on domestic wastewater facilities, individual on-site sewage treatment and disposal systems, or community on-site sewage treatment and disposal systems.

(3) The department of health and local health officers may permit the reuse of greywater according to rules adopted by the department of health. [1997 c 444 § 8.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

## Chapter 90.48

### WATER POLLUTION CONTROL

#### Sections

|           |   |
|-----------|---|
| 90.48.045 | Environmental excellence program agreements—Effect on chapter.      |
| 90.48.112 | Plan evaluation—Consideration of reclaimed water.                   |
| 90.48.261 | Exercise of powers under RCW 90.48.260—Aquatic resource mitigation. |
| 90.48.465 | Water discharge fees.   |

**90.48.045 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions

of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 26.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**90.48.112 Plan evaluation—Consideration of reclaimed water.** The evaluation of any plans submitted under RCW 90.48.110 must include consideration of opportunities for the use of reclaimed water as defined in RCW 90.46.010. [1997 c 444 § 9.]

**Severability—1997 c 444:** See note following RCW 90.46.010.

**90.48.261 Exercise of powers under RCW 90.48.260—Aquatic resource mitigation.** When exercising its powers under RCW 90.48.260, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030. [1997 c 424 § 7.]

**90.48.465 Water discharge fees.** (1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule within one year of March 1, 1989, and thereafter the fee schedule shall be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system. The department shall adopt by rule a schedule of credits for any municipality engaging in a comprehensive monitoring program beyond the requirements imposed by the department, with the credits available for five years from March 1, 1989, and with the total amount of all credits not to exceed fifty thousand dollars in the five-year period.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain

permits for storm water runoff and shall provide appropriate adjustments.

(5) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

(6) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years. [1997 c 398 § 2; 1996 c 37 § 3; 1992 c 174 § 17; 1991 c 307 § 1; 1989 c 2 § 13 (Initiative Measure No. 97, approved November 8, 1988).]

**Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2:** See RCW 70.105D.900 through 70.105D.921, respectively.

## Chapter 90.52

### POLLUTION DISCLOSURE ACT OF 1971

#### Sections

90.52.005 Environmental excellence program agreements—Effect on chapter.

**90.52.005 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 27.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

## Chapter 90.54

### WATER RESOURCES ACT OF 1971

#### Sections

90.54.020 General declaration of fundamentals for utilization and management of waters of the state.

90.54.030 Water and related resources—Department to be advised—Water resources data program.

90.54.040 Comprehensive state water resources program—Modifying existing and adopting new regulations and statutes.

90.54.050 Setting aside or withdrawing waters—Rules—Consultation with legislative committees—Public hearing, notice—Review.

90.54.100 Department to evaluate needs for projects and alternative methods of financing.

90.54.190 Repealed.

90.54.200 Repealed.

**90.54.020 General declaration of fundamentals for utilization and management of waters of the state.** Utilization and management of the waters of the state shall be guided by the following general declaration of fundamentals:

(1) Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and

enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.

(2) Allocation of waters among potential uses and users shall be based generally on the securing of the maximum net benefits for the people of the state. Maximum net benefits shall constitute total benefits less costs including opportunities lost.

(3) The quality of the natural environment shall be protected and, where possible, enhanced as follows:

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. Technology-based effluent limitations or standards for discharges for municipal water treatment plants located on the Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted to reflect credit for substances removed from the plant intake water if:

(i) The municipality demonstrates that the intake water is drawn from the same body of water into which the discharge is made; and

(ii) The municipality demonstrates that no violation of receiving water quality standards or appreciable environmental degradation will result.

(4) The development of multipurpose water storage facilities shall be a high priority for programs of water allocation, planning, management, and efficiency. The department, other state agencies, local governments, and planning units formed under \*section 107 or 108 of this act shall evaluate the potential for the development of new storage projects and the benefits and effects of storage in reducing damage to stream banks and property, increasing the use of land, providing water for municipal, industrial, agricultural, power generation, and other beneficial uses, and improving stream flow regimes for fisheries and other instream uses.

(5) Adequate and safe supplies of water shall be preserved and protected in potable condition to satisfy human domestic needs.

(6) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery

resources in the planning for and construction of water impoundment structures and other artificial obstructions.

(7) Federal, state, and local governments, individuals, corporations, groups and other entities shall be encouraged to carry out practices of conservation as they relate to the use of the waters of the state. In addition to traditional development approaches, improved water use efficiency and conservation shall be emphasized in the management of the state's water resources and in some cases will be a potential new source of water with which to meet future needs throughout the state.

(8) Development of water supply systems, whether publicly or privately owned, which provide water to the public generally in regional areas within the state shall be encouraged. Development of water supply systems for multiple domestic use which will not serve the public generally shall be discouraged where water supplies are available from water systems serving the public.

(9) Full recognition shall be given in the administration of water allocation and use programs to the natural interrelationships of surface and ground waters.

(10) Expressions of the public interest will be sought at all stages of water planning and allocation discussions.

(11) Water management programs, including but not limited to, water quality, flood control, drainage, erosion control and storm runoff are deemed to be in the public interest. [1997 c 442 § 201; 1989 c 348 § 1; 1987 c 399 § 2; 1971 ex.s. c 225 § 2.]

**\*Reviser's note:** Sections 107 and 108 of this act were vetoed by governor.

**Part headings not law—Severability—1997 c 442:** See RCW 90.82.900 and 90.82.901.

**Severability—1989 c 348:** "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." [1989 c 348 § 13.]

**Rights not impaired—1989 c 348:** See RCW 90.54.920.

**90.54.030 Water and related resources—Department to be advised—Water resources data program.** For the purpose of ensuring that the department is fully advised in relation to the performance of the water resources program provided in RCW 90.54.040, the department is directed to become informed with regard to all phases of water and related resources of the state. To accomplish this objective the department shall:

(1) Develop a comprehensive water resource data program that provides the information necessary for effective planning and management on a regional and state-wide basis. The data program shall include an information management plan describing the data requirements for effective water resource planning, and a system for collecting and providing access to water resource data on a regional and state-wide basis;

(2) Collect, organize and catalog existing information and studies available to it from all sources, both public and private, pertaining to water and related resources of the state;

(3) Develop such additional data and studies pertaining to water and related resources as are necessary to accomplish the objectives of this chapter; and

(4) Develop alternate courses of action to solve existing and foreseeable problems of water and related resources and

include therein, to the extent feasible, the economic and social consequences of each such course, and the impact on the natural environment.

All the foregoing shall be included in a "water resources information system" established and maintained by the department. The department shall develop a system of cataloging, storing and retrieving the information and studies of the information system so that they may be made readily available to and effectively used not only by the department but by the public generally. [1997 c 32 § 1; 1990 c 295 § 2; 1988 c 47 § 4; 1971 ex.s. c 225 § 3.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

**90.54.040 Comprehensive state water resources program—Modifying existing and adopting new regulations and statutes.** (1) The department, through the adoption of appropriate rules, is directed, as a matter of high priority to insure that the waters of the state are utilized for the best interests of the people, to develop and implement in accordance with the policies of this chapter a comprehensive state water resources program which will provide a process for making decisions on future water resource allocation and use. The department may develop the program in segments so that immediate attention may be given to waters of a given physioeconomic region of the state or to specific critical problems of water allocation and use.

(2) In relation to the management and regulatory programs relating to water resources vested in it, the department is further directed to modify existing regulations and adopt new regulations, when needed and possible, to insure that existing regulatory programs are in accord with the water resource policy of this chapter and the program established in subsection (1) of this section.

(3) The department is directed to review all statutes relating to water resources which it is responsible for implementing. When any of the same appear to the department to be ambiguous, unclear, unworkable, unnecessary, or otherwise deficient, it shall make recommendations to the legislature including appropriate proposals for statutory modifications or additions. Whenever it appears that the policies of any such statutes are in conflict with the policies of this chapter, and the department is unable to fully perform as provided in subsection (2) of this section, the department is directed to submit statutory modifications to the legislature which, if enacted, would allow the department to carry out such statutes in harmony with this chapter. [1997 c 32 § 2; 1988 c 47 § 5; 1971 ex.s. c 225 § 4.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

**90.54.050 Setting aside or withdrawing waters—Rules—Consultation with legislative committees—Public hearing, notice—Review.** In conjunction with the programs provided for in RCW 90.54.040(1), whenever it appears necessary to the director in carrying out the policy of this chapter, the department may by rule adopted pursuant to chapter 34.05 RCW:

(1) Reserve and set aside waters for beneficial utilization in the future, and

(2) When sufficient information and data are lacking to allow for the making of sound decisions, withdraw various waters of the state from additional appropriations until such data and information are available. Before proposing the adoption of rules to withdraw waters of the state from additional appropriation, the department shall consult with the standing committees of the house of representatives and the senate having jurisdiction over water resource management issues.

Prior to the adoption of a rule under this section, the department shall conduct a public hearing in each county in which waters relating to the rule are located. The public hearing shall be preceded by a notice placed in a newspaper of general circulation published within each of said counties. Rules adopted hereunder shall be subject to review in accordance with the provisions of RCW 34.05.240. [1997 c 439 § 2; 1997 c 32 § 3; 1988 c 47 § 7; 1971 ex.s. c 225 § 5.]

**Reviser's note:** This section was amended by 1997 c 32 § 3 and by 1997 c 439 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**WAC 173-563-015—Validity—1997 c 439:** "WAC 173-563-015 as it existed prior to July 27, 1997, is void." [1997 c 439 § 1.]

**Application—Severability—1988 c 47:** See notes following RCW 43.83B.300.

**90.54.100 Department to evaluate needs for projects and alternative methods of financing.** The department of ecology shall as a matter of high priority evaluate the needs for water resource development projects and the alternative methods of financing of the same by public and private agencies, including financing by federal, state and local governments and combinations thereof. Such evaluations shall be broadly based and be included as a part of the comprehensive state water resources program relating to uses and management as defined in RCW 90.54.030. [1997 c 32 § 5; 1971 ex.s. c 225 § 11.]

**90.54.190 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**90.54.200 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 90.56

### OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

#### Sections

90.56.510 Oil spill administration account.

**90.56.510 Oil spill administration account.** (1) The oil spill administration account is created in the state treasury. All receipts from RCW 82.23B.020(2) shall be deposited in the account. Moneys from the account may be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW. If, on the first day of any calendar month, the balance of the oil spill response account is greater than ten million dollars and the balance of the oil spill administration account exceeds the

unexpended appropriation for the current biennium, then the tax under RCW 82.23B.020(2) shall be suspended on the first day of the next calendar month until the beginning of the following biennium, provided that the tax shall not be suspended during the last six months of the biennium. If the tax imposed under RCW 82.23B.020(2) is suspended during two consecutive biennia, the department shall by November 1st after the end of the second biennium, recommend to the appropriate standing committees an adjustment in the tax rate. For the biennium ending June 30, 1997, the state treasurer may transfer up to \$1,718,000 from the oil spill response account to the oil spill administration account to support appropriations made from the oil spill administration account in the omnibus and transportation appropriations acts adopted not later than June 30, 1997.

(2) Expenditures from the oil spill administration account shall be used exclusively for the administrative costs related to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46 RCW. Starting with the 1995-1997 biennium, the legislature shall give activities of state agencies related to prevention of oil spills priority in funding from the oil spill administration account. Costs of administration include the costs of:

(a) Routine responses not covered under RCW 90.56.500;

(b) Management and staff development activities;

(c) Development of rules and policies and the state-wide plan provided for in RCW 90.56.060;

(d) Facility and vessel plan review and approval, drills, inspections, investigations, enforcement, and litigation;

(e) Interagency coordination and public outreach and education;

(f) Collection and administration of the tax provided for in chapter 82.23B RCW; and

(g) Appropriate travel, goods and services, contracts, and equipment. [1997 c 449 § 3; 1995 2nd sp.s. c 14 § 525; 1994 sp.s. c 6 § 903; 1993 c 162 § 2; 1992 c 73 § 41; 1991 c 200 § 806.]

**Effective date—1997 c 449:** See note following RCW 43.211.005.

**Severability—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Effective dates—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**Severability—Effective date—1994 sp.s. c 6:** See notes following RCW 28A.310.020.

**Severability—Effective date—1993 c 162:** See notes following RCW 88.46.170.

**Effective dates—1992 c 73:** See RCW 82.23B.902.

## Chapter 90.58

### SHORELINE MANAGEMENT ACT OF 1971

#### Sections

- 90.58.045 Environmental excellence program agreements—Effect on chapter.
- 90.58.090 Approval of master program or segments or amendments thereof, when—Procedure—Departmental alternatives when shorelines of state-wide significance—Later adoption of master program supersedes departmental program.
- 90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.

- 90.58.143 Time requirements—Substantial development permits, variances, conditional use permits.
- 90.58.180 Appeals from granting, denying, or rescinding permits—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court.

**90.58.045 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 28.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**90.58.090 Approval of master program or segments or amendments thereof, when—Procedure—Departmental alternatives when shorelines of state-wide significance—Later adoption of master program supersedes departmental program.** (1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(4) The department shall approve those segments of the master program relating to shorelines of state-wide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the state-wide interest. If the department does not approve a segment of a local government master program relating to a shoreline of state-wide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(5) In the event a local government has not complied with the requirements of RCW 90.58.070 it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(6) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program. [1997 c 429 § 50; 1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.** (1) The master programs



provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, industrial projects of state-wide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the state-wide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment. [1997 c 369 § 7; 1995 c 347 § 307; 1992 c 105 § 2; 1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.  
*Industrial project of state-wide significance—Defined: RCW 43.157.010.*

**90.58.143 Time requirements—Substantial development permits, variances, conditional use permits.** (1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration

date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. [1997 c 429 § 51; 1996 c 62 § 1.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**90.58.180 Appeals from granting, denying, or rescinding permits—Board to act—Local government appeals to board—Grounds for declaring rule, regulation, or guideline invalid—Appeals to court.** (1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW 90.58.140(6).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section

within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board. [1997 c 199 § 1; 1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1986 c 292:** See note following RCW 90.58.030.

*Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.*

## Chapter 90.60

### ENVIRONMENTAL PERMIT ASSISTANCE

#### Sections

90.60.030 Permit assistance center—Duties.

**90.60.030 Permit assistance center—Duties.** The permit assistance center is established within the department. The center shall:

(1) Publish and keep current one or more handbooks containing lists and explanations of all permit laws. To the

extent possible, the handbook shall include relevant federal and tribal laws. A state agency or local government shall provide a reasonable number of copies of application forms, statutes, ordinances, rules, handbooks, and other informational material requested by the center and shall otherwise fully cooperate with the center. The center shall seek the cooperation of relevant federal agencies and tribal governments;

(2) Establish, and make known, a point of contact for distribution of the handbook and advice to the public as to its interpretation in any given case;

(3) Work closely and cooperatively with the business license center in providing efficient and nonduplicative service to the public;

(4) Seek the assignment of employees from the permit agencies listed under RCW 90.60.020(6)(a) to serve on a rotating basis in staffing the center;

(5) Collect and disseminate information to public and private entities on federal, state, local, and tribal government programs that rely on private professional expertise to assist governmental agencies in project permit review; and

(6) Provide an annual report to the legislature on potential conflicts and perceived inconsistencies among existing statutes. The first report shall be submitted to the appropriate standing committees of the house of representatives and senate by December 1, 1996. [1997 c 429 § 35; 1995 c 347 § 603.]

**Sunset Act application:** See note following chapter digest.

**Severability—1997 c 429:** See note following RCW 36.70A.3201

## Chapter 90.64

### DAIRY WASTE MANAGEMENT

#### Sections

90.64.015 Environmental excellence program agreements—Effect on chapter.

**90.64.015 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 29.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

## Chapter 90.71

### PUGET SOUND WATER QUALITY PROTECTION

#### Sections

90.71.015 Environmental excellence program agreements—Effect on chapter.

**90.71.015 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 30.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

## Chapter 90.72

### SHELLFISH PROTECTION DISTRICTS

#### Sections

90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted.

**90.72.040 Shellfish protection districts—Creation—Boundaries—Cooperation with governmental entities—Abolition—Referendum to repeal creation—Certain fees not permitted.** (1) The county legislative authority may create a shellfish protection district on its own motion or by submitting the question to the voters of the proposed district and obtaining the approval of a majority of those voting. The boundaries of the district shall be determined by the legislative authority. The legislative authority may create more than one district. A district may include any area or areas within the county, whether incorporated or unincorporated. Counties shall coordinate and cooperate with cities, towns, and water-related special districts within their boundaries in establishing shellfish protection districts and carrying out shellfish protection programs. Where a portion of the proposed district lies within an incorporated area, the county shall develop procedures for the participation of the city or town in the determination of the boundaries of the district and the administration of the district, including funding of the district's programs. The legislative authority of more than one county may by agreement provide for the creation of a district including areas within each of those counties. County legislative authorities are encouraged to coordinate their plans and programs to protect shellfish growing areas, especially where shellfish growing areas are located within the boundaries of more than one county. The legislative authority or authorities creating a district may abolish a shellfish protection district on its or their own motion or by submitting the question to the voters of the district and obtaining the approval of a majority of those voting.

(2) If the county legislative authority creates a shellfish protection district by its own motion, any registered voter residing within the boundaries of the shellfish protection district may file a referendum petition to repeal the ordinance that created the district. Any referendum petition to repeal the ordinance creating the shellfish protection district shall be filed with the county auditor within seven days of passage of the ordinance. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in creation of the shellfish protection district and a negative answer to the question and a negative vote on the measure results in the shellfish protection district not being created. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters

residing within the boundaries of the shellfish protection district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title and full text of the measure to be referred. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the shellfish protection district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor. The special election may be conducted by mail ballot as provided for in chapter 29.36 RCW.

(3) The county legislative authority shall not impose fees, rates, or charges for shellfish protection district programs upon properties on which fees, rates, or charges are imposed under chapter 36.89 or 36.94 RCW for substantially the same programs and services. [1997 c 447 § 20; 1992 c 100 § 3; 1985 c 417 § 4.]

**Finding—Purpose—1997 c 447:** See note following RCW 70.05.074.

**Findings—1992 c 100:** See note following RCW 90.72.030.

## Chapter 90.74

### AQUATIC RESOURCES MITIGATION

#### Sections

|           |  |
|-----------|--|
| 90.74.005 | Findings—Intent.   |
| 90.74.010 | Definitions.   |
| 90.74.020 | Mitigation plans.  |
| 90.74.030 | Regulatory decisions, guidance—Multiple requests for review of mitigation plans. |

**90.74.005 Findings—Intent.** (1) The legislature finds that:

(a) The state lacks a clear policy relating to the mitigation of wetlands and aquatic habitat for infrastructure development;

(b) Regulatory agencies have generally required project proponents to use compensatory mitigation only at the site of the project's impacts and to mitigate narrowly for the habitat or biological functions impacted by a project;

(c) This practice of considering traditional on-site, in-kind mitigation may provide fewer environmental benefits when compared to innovative mitigation proposals that provide benefits in advance of a project's planned impacts and that restore functions or habitat other than those impacted at a project site; and

(d) Regulatory decisions on development proposals that attempt to incorporate innovative mitigation measures take an unreasonably long period of time and are subject to a great deal of uncertainty and additional expenses.

(2) The legislature therefore declares that it is the policy of the state to authorize innovative mitigation measures by requiring state regulatory agencies to consider mitigation proposals for infrastructure projects that are timed, designed, and located in a manner to provide equal or better biological functions and values compared to traditional on-site, in-kind mitigation proposals.

(3) It is the intent of the legislature to authorize local governments to accommodate the goals of this chapter. It is not the intent of the legislature to: (a) Restrict the ability of a project proponent to pursue project specific mitigation; or

(b) create any new authority for regulating wetlands or aquatic habitat beyond what is specifically provided for in this chapter. [1997 c 424 § 1.]

**90.74.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Mitigation" means sequentially avoiding impacts, minimizing impacts, or compensating for remaining unavoidable impacts.

(2) "Compensatory mitigation" means the restoration, creation, enhancement, or preservation of uplands, wetlands, or other aquatic resources for the purposes of compensating for unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved. "Compensatory mitigation" includes mitigation that:

(a) Occurs at the same time as, or in advance of, a project's planned environmental impacts;

(b) Is located in a site either on, near, or distant from the project's impacts; and

(c) Provides either the same or different biological functions and values as the functions and values impacted by the project.

(3) "Infrastructure development" means an action that is critical for the maintenance or expansion of an existing infrastructure feature such as a highway, rail line, airport, marine terminal, utility corridor, harbor area, or hydroelectric facility and is consistent with an approved land use planning process. This planning process may include the growth management act, chapter 36.70A RCW, or the shoreline management act, chapter 90.58 RCW, in areas covered by those chapters.

(4) "Mitigation plan" means a document or set of documents developed through joint discussions between a project proponent and environmental regulatory agencies that describe the unavoidable wetland or aquatic resource impacts of the proposed infrastructure development and the proposed compensatory mitigation for those impacts.

(5) "Project proponent" means a public or private entity responsible for preparing a mitigation plan.

(6) "Watershed" means an area identified as a state of Washington water resource inventory area under WAC 173-500-040 as it exists on July 27, 1997. [1997 c 424 § 2.]

**90.74.020 Mitigation plans.** (1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The departments of ecology and fish and wildlife may not limit the scope of options in a mitigation plan to

areas on or near the project site, or to habitat types of the same type as contained on the project site. The departments of ecology and fish and wildlife shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The departments of ecology and fish and wildlife are not required to grant approval to a mitigation plan that the departments find does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the departments of ecology and fish and wildlife shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and either the department of ecology or the department of fish and wildlife, or both. [1997 c 424 § 3.]

**90.74.030 Regulatory decisions, guidance—Multiple requests for review of mitigation plans.** (1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the departments of ecology and fish and wildlife shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology or the department of fish and wildlife receives multiple requests for review of mitigation plans, each department may schedule its review of these proposals to conform to available budgetary resources. [1997 c 424 § 4.]

**Chapter 90.80**

**WATER CONSERVANCY BOARDS**

Sections

- 90.80.005 Findings.
- 90.80.010 Definitions.
- 90.80.020 Water conservancy boards—Creation.

- 90.80.030 Petition for board creation—Required information—Approval or denial—Description of training requirements.
- 90.80.040 Rules—Minimum training requirements and continuing education.
- 90.80.050 Corporate powers—Board composition—Members' terms, expenses.
- 90.80.060 Board powers—Funding.
- 90.80.070 Applications for water transfers—Notice.
- 90.80.080 Transfers—Review—Approval.
- 90.80.090 Appeals from director's decisions.
- 90.80.100 Damages arising from board-approved transfers—Immunity of county and department.
- 90.80.110 Approval of interties.
- 90.80.120 Conflicts of interest.
- 90.80.130 Application of open public meetings act.
- 90.80.140 Transfers approved under chapter 90.03 RCW not affected.
- 90.80.150 Reports to legislative committees.
- 90.80.900 Severability—1997 c 441.

**90.80.005 Findings.** The legislature finds:

(1) Voluntary water transfers between water users can reallocate water use in a manner that will result in more efficient use of water resources;

(2) Voluntary water transfers can help alleviate water shortages, save capital outlays, reduce development costs, and provide an incentive for investment in water conservation efforts by water right holders; and

(3) The state should expedite the administrative process for noncontested water transfers among water right holders, conveying greater operational control to water managers and water right holders. [1997 c 441 § 1.]

**90.80.010 Definitions.** The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Board" means a water conservancy board created under this chapter.

(2) "Commissioner" means a member of a water conservancy board.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology. [1997 c 441 § 2.]

**90.80.020 Water conservancy boards—Creation.**

(1) The county legislative authority of a county may create a water conservancy board, subject to approval by the director, for the purpose of expediting voluntary water transfers within the county.

(2) A water conservancy board may be initiated by: (a) A resolution of the county legislative authority; (b) a resolution presented to the county legislative authority calling for the creation of a board by the legislative authority of an irrigation district, public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system; (c) a resolution by the governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts; (d) a petition signed by five or more water rights holders, including their addresses, who divert water for use within the county; or (e) any combination of (a) through (d) of this subsection. The resolution or petition must state the need for the board, include proposed bylaws or rules and proce-

dures that will govern the operation of the board, identify the geographic boundaries where there is an initial interest in transacting water sales or transfers, and describe the proposed method for funding the operation of the board.

(3) After receiving a resolution or petition to create a board, a county legislative authority shall determine its sufficiency. If the county legislative authority finds that the resolution or petition is sufficient, or if the county is initiating the creation of a board upon its own motion, it shall hold at least one public hearing on the proposed creation of the board. Notice of the hearing shall be published at least once in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the hearing. The notice shall describe the time, date, place, and purpose of the hearing, as well as the purpose of the board. Following the hearing, the county legislative authority may adopt a resolution approving the creation of the board if it finds that the board's creation is in the public interest. [1997 c 441 § 3.]

**90.80.030 Petition for board creation—Required information—Approval or denial—Description of training requirements.** (1) The county legislative authority shall forward a copy of the resolution or petition calling for the creation of the board, a copy of the resolution approving the creation of the board, and a summary of the public testimony presented at the public hearing to the director following the adoption of the resolution calling for the board's creation.

(2) The director shall approve or deny the creation of a board within forty-five days after the county legislative authority has submitted all information required under subsection (1) of this section. The director must determine whether the creation of the board would further the purposes of this chapter and is in the public interest. The director shall include a description of the necessary training requirements for commissioners in the notice of approval sent to the county legislative authority. [1997 c 441 § 4.]

**90.80.040 Rules—Minimum training requirements and continuing education.** The director of the department may, as deemed necessary by the director, adopt rules in accordance with chapter 34.05 RCW necessary to carry out this chapter, including minimum requirements for the training and continuing education of commissioners. Training courses for commissioners shall include an overview of state water law and hydrology. Prior to commissioners taking action on proposed water right transfers, the commissioners shall comply with training requirements that include state water law and hydrology. [1997 c 441 § 5.]

**90.80.050 Corporate powers—Board composition—Members' terms, expenses.** A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority for six-year terms. The county legislative authority shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. All vacancies shall be filled for the unexpired term. The county legislative

authority shall consider, but is not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. However, the county legislative authority shall ensure that individual water right holders who divert water for use within the county are represented on the board. In making appointments to the board, the county legislative authority shall choose from among persons who are residents of the county or a county that is contiguous to the county that the water conservancy board is to serve. No commissioner may participate in board decisions until he or she has successfully completed the necessary training required under RCW 90.80.040. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to training. [1997 c 441 § 6.]

**90.80.060 Board powers—Funding.** (1) A water conservancy board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or any interest therein, enter into and perform all necessary contracts, appoint and employ necessary agents and employees and fix their compensation, employ contractors including contracts for professional services, sue and be sued, and do any and all lawful acts required and expedient to carry out the purposes of this chapter.

(2) A board constitutes an independently funded entity, and may provide for its own funding as determined by the commissioners. The board may accept grants and may adopt fees for processing applications for transfers of water rights to fund the activities of the board. A board may not impose taxes or acquire property by the exercise of eminent domain. [1997 c 441 § 7.]

**90.80.070 Applications for water transfers—Notice.** (1) Applications to the board for transfers shall be made on a form provided by the department, and shall contain such additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction of the transferor's right to the quantity of water being transferred, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.

(2) The transferor and the transferee of any proposed water transfer may apply to a board for approval of the transfer if the water proposed to be transferred is currently diverted or used within the geographic boundaries of the county, or would be diverted or used within the geographic boundaries of the county if the transfer is approved. In the case of a proposed water transfer in which the water is currently diverted or would be diverted outside the geographic boundaries of the county, the board shall hold a public hearing in the county of the diversion or proposed diversion. The board shall provide for prominent publication of notice of such hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application in accordance with the publication requirements and send notice to state agencies as provided in RCW 90.03.280. Any person may submit comments to the board regarding the application. Any water right holder claiming detriment or injury to an existing water right may intervene in the application before the board pursuant to subsection (4) of this section. If a majority of the board determines that the application is complete, in accordance with the law and the transfer can be made without injury or detriment to existing water rights in accordance with RCW 90.03.380, the board shall issue the applicant a certificate conditionally approving the transfer, subject to review by the director.

(4) If a water right holder claims a proposed transfer will cause an impairment to that right, the water right holder is entitled to a hearing before the board. The board shall receive such evidence as it deems material and necessary to determine the validity of the claim of impairment. If the party claiming the impairment establishes by a preponderance of the evidence that his or her water right will be impaired by the proposed transfer, the board may not approve the transfer unless the applicant and the impaired party agree upon compensation for the impairment. [1997 c 441 § 9.]

**90.80.080 Transfers—Review—Approval.** (1) If a transfer is approved by the board, the board shall submit a copy of the proposed certificate conditionally approving the transfer to the department for review. The board shall also submit a report summarizing any factual findings on which the board relied in deciding to approve the proposed transfer. The board shall also transmit notice by mail to any person who objected to the transfer or who requested notice.

(2) The director shall review each proposed transfer conditionally approved by a board for compliance with state water transfer laws including RCW 90.03.380, 90.03.390, and 90.44.100, rules and guidelines adopted by the department, and other applicable law.

(3) Any party to a transfer or a third party who alleges his or her water right will be impaired by the proposed transfer may file objections with the department. If objections to the transfer are filed with the department, the board shall forward the files and records upon which it based its decision to the department.

(4) The director shall review the action of the board and affirm, reverse, or modify the action of the board within forty-five days of receipt. The forty-five day time period may be extended for an additional thirty days by the director, upon the consent of the parties to the transfer. If the director fails to act within this time period, the board's action is final. Upon approval of a water transfer by the action or nonaction of the director, the conditional certificate issued by the board is final and valid. [1997 c 441 § 11.]

**90.80.090 Appeals from director's decisions.** The decision of the director to approve an action to create a board, or to approve, deny, or modify a water transfer either by action or nonaction shall be appealable in the same manner as other water right decisions made pursuant to chapter 90.03 RCW. [1997 c 441 § 12.]

**90.80.100 Damages arising from board-approved transfers—Immunity of county and department.** Neither the county nor the department shall be subject to any cause of action or claim for damages arising out of transfers approved by a board under this chapter. [1997 c 441 § 13.]

**90.80.110 Approval of interties.** Nothing in this chapter eliminates or lessens the requirements necessary for the approval of interties. [1997 c 441 § 15.]

**90.80.120 Conflicts of interest.** (1) A commissioner of a water conservancy board who has an ownership interest in a water right subject to an application for approval of a transfer or change by the board, shall not participate in the board's review or decision upon the application.

(2) A commissioner of a water conservancy board who also serves as an employee or upon the governing body of a municipally owned water system, shall not participate in the board's review or decision upon an application for the transfer or change of a water right in which that water system has or is proposed to have an ownership interest. [1997 c 441 § 16.]

**90.80.130 Application of open public meetings act.** Water conservancy board activities are subject to the open public meetings act, chapter 42.30 RCW. [1997 c 441 § 17.]

**90.80.140 Transfers approved under chapter 90.03 RCW not affected.** Nothing in this chapter affects transfers that may be otherwise approved under chapter 90.03 RCW. [1997 c 441 § 18.]

**90.80.150 Reports to legislative committees.** The department shall report biennially by December 31st of each even-numbered year to the appropriate committees of the legislature on the boards formed or sought to be formed under the authority of this chapter, the transfer applications reviewed and other activities conducted by the boards, and the funding of such boards. [1997 c 441 § 19.]

**90.80.900 Severability—1997 c 441.** 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. [1997 c 441 § 20.]

## Chapter 90.82

### WATER RESOURCE MANAGEMENT

#### Sections

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**90.82.005 Purpose.** The purpose of this chapter is to develop a more thorough and cooperative method of determining what the current water resource situation is in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development.

It is necessary for the legislature to establish processes and policies that will result in providing state agencies with more specific guidance to manage the water resources of the state consistent with current law and direction provided by local entities and citizens through the process established in accordance with this chapter. [1997 c 442 § 101.]

**90.82.010 Finding.** The legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. The local development of these plans serves vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources. The development of such plans serves the state's vital interests by ensuring that the state's water resources are used wisely, by protecting existing water rights, by protecting instream flows for fish, and by providing for the economic well-being of the state's citizenry and communities. Therefore, the legislature believes it necessary for units of local government throughout the state to engage in the orderly development of these watershed plans. [1997 c 442 § 102.]

**90.82.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Implementing rules" for a WRIA plan are the rules needed to give force and effect to the parts of the plan that create rights or obligations for any party including a state agency or that establish water management policy.

(3) "Minimum instream flow" means a minimum flow under chapter 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.

(4) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(5) "Water supply utility" means a water, combined water-sewer, irrigation, reclamation, or public utility district that provides water to persons or other water users within the district or a division or unit responsible for administering a publicly governed water supply system on behalf of a county.

(6) "WRIA plan" or "plan" means the product of the planning unit including any rules adopted in conjunction with the product of the planning unit. [1997 c 442 § 103.]

**90.82.030 Principles.** In order to have the best possible program for appropriating and administering water use in the state, the legislature establishes the following principles and criteria to carry out the purpose and intent of chapter 442, Laws of 1997.

(1) All WRIA planning units established under this chapter shall develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process.

(2) If a planning unit requests technical assistance from a state agency as part of its planning activities under this chapter and the assistance is with regard to a subject matter over which the agency has jurisdiction, the state agency shall provide the technical assistance to the planning unit.

(3) Plans developed under chapter 442, Laws of 1997 shall be consistent with and not duplicative of efforts already under way in a WRIA, including but not limited to watershed analysis conducted under state forest practices statutes and rules. [1997 c 442 § 104.]

**90.82.040 WRIA planning units—Funding assistance—Administrative costs.** (1) Once a WRIA planning unit has been organized and designated a lead agency, it shall notify the department and may apply to the department for funding assistance for conducting the planning. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2) Each planning unit that has complied with subsection (1) of this section is eligible to receive fifty thousand dollars for each WRIA to initiate the planning process. The department shall allocate additional funds to WRIA planning units based on need demonstrated by a detailed proposed budget submitted by the planning unit for carrying out the duties of the planning unit. Each WRIA planning unit may receive up to two hundred fifty thousand dollars for each WRIA during the first two-year period of planning, with a maximum allocation of five hundred thousand dollars for each WRIA. Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose.

(3) Preference shall be given to planning units requesting funding for conducting multi-WRIA planning under \*section 108 of this act.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs. [1997 c 442 § 105.]

\*Reviser's note: Section 108 of this act was vetoed by the governor.

**90.82.050 Limitations on liability.** (1) This chapter shall not be construed as creating a new cause of action against the state or any county, city, town, water supply utility, conservation district, or planning unit.

(2) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no claim for damages may be filed against the state or any county, city, town, water supply utility, tribal governments, conservation district, or planning unit that or member of a planning unit who participates in a WRIA planning unit for performing responsibilities under this chapter. [1997 c 442 § 106.]

**90.82.900 Part headings not law—1997 c 442.** As used in this act, part headings constitute no part of the law. [1997 c 442 § 803.]

**90.82.901 Severability—1997 c 442.** 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. [1997 c 442 § 805.]



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## ECONOMIC AND REVENUE FORECAST COUNCIL

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## GROSS MISDEMEANOR

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## RESPIRATORY CARE PRACTITIONERS

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